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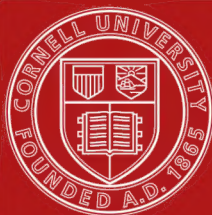
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# LIFE AND LETTERS

OF

## J O S E P H S T O R Y ,

ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES,  
AND DANE PROFESSOR OF LAW AT HARVARD UNIVERSITY.

EDITED BY HIS SON,

WILLIAM W. STORY.

"And thou art worthy; full of power  
As gentle; liberal-minded, great,  
Consistent; wearing all that weight  
Of learning lightly as a flower."

VOLUME II.

BOSTON:

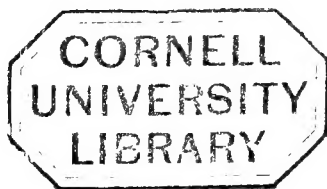
CHARLES C. LITTLE AND JAMES BROWN.

1851.

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# LIFE AND LETTERS.

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### PROFESSORIAL AND JUDICIAL LIFE.

FOUNDATION OF THE PROFESSORSHIP OF LAW AT HARVARD UNIVERSITY, BY MR. DANE—MY FATHER'S INTERVIEWS WITH MR. DANE—HE ACCEPTS THE APPOINTMENT OF DANE PROFESSOR OF LAW—APPOINTMENT OF MR. ASHMUN TO THE ROYALL PROFESSORSHIP—INAUGURATION OF THE PROFESSORS—DISCOURSE BY MY FATHER—EXTRACTS—CHRISTIANITY A PART OF THE COMMON LAW—CORRESPONDENCE WITH HON. JOHN Q. ADAMS—REMOVAL TO CAMBRIDGE—DISCOURSE BEFORE THE MECHANICS' INSTITUTE—FULTON'S FIRST STEAMBOAT—CONTRIBUTIONS TO THE ENCYCLOPEDIA AMERICANA—"INGLIS *v.* THE TRUSTEES OF SNUG HARBOR"—DEATH OF MR. JUSTICE WASHINGTON—SKETCH OF HIM—LETTERS—OPINION OF JEFFERSON'S CORRESPONDENCE—RETURN TO CAMBRIDGE—METHOD OF TEACHING IN THE LAW SCHOOL—SALARY—BEGINNING OF THE LAW SCHOOL—MY FATHER SURRENDERS HIS LIBRARY TO THE COLLEGE—PROJECTS FOR A NEW BUILDING—LECTURES BEFORE THE FAMILIES OF THE PROFESSORS—LETTERS FROM WASHINGTON—"CHEROKEE NATION *v.* THE STATE OF GEORGIA"—MOOT COURTS AND JURY TRIALS IN THE LAW SCHOOL—DEATH OF HIS DAUGHTER LOUISA—LINES WRITTEN ON HER DEATH—LETTERS RELATING TO IT—A PRAYER—TRANSLATION OF SHENSTONE'S EPITAPH ON MISS DOLMAN—CONSECRATION OF MOUNT AUBURN CEMETERY—ADDRESS—EXTRACTS.

DURING the latter part of the year 1829, the Hon. Nathan Dane, the author of the Abridgment of American

Law, then resident in Beverly, conceived the project of founding a Law Professorship at Harvard University. With this view, he wrote to my father, requesting an interview, and a time having been appointed, they met at his house. He then opened his views, by stating that, in his belief, the establishment of a Law College at Cambridge, at which the principles of jurisprudence should be taught systematically, as a science, would not only extend the influence of the University, but would render effectual service to the country and the profession. He then proceeded to say, that as the profits he had received from his Abridgment were now sufficient to enable him to carry out these views, he proposed to bestow upon Harvard University the sum of ten thousand dollars, as a foundation for a Professorship of Law, on one condition, that my father should become the first occupant of the Professorial Chair. My father, having already declined to accept the Royall Professorship of Law at Cambridge, was at first wholly indisposed to treat the proposition with favor, as far as it related to him; but as his acceptance of the office was urged, as the indispensable condition of the donation, he was prevailed upon to take the matter into consideration. Several interviews succeeded, during which, the amount of compensation, the duties to be required, and all the details of the scheme were discussed, until finally, my father became so much interested, that, despite his many doubts, he concluded to accept the office. Several considerations conspired to induce this conclusion: his enthusiasm for education; his love of the law as a science; the peculiar scope which this position would give to his powers, as an extempore lecturer; the interest



he took in the young ; the filial feeling with which he regarded the University ; — but the leading motive, and that which was the keystone of all others, was, that his refusal would deprive the University of a useful and honorable foundation. On the other hand, many considerations operated to induce a refusal, so many indeed, that, as we have seen, he had previously declined a similar position. The acceptance of this new office would, he well knew, crowd his leisure time with labor ; and the removal from Salem, by breaking up his family associations, and the social circle which had gathered around him, and to which he had become greatly endeared, might materially interfere with his happiness. But after balancing all arguments, for and against the proposition, he concluded to accept it. If Mr. Dane is entitled to the honor of being the founder of this Professorship, to my father is due the honor of being the *fundator perficiens*, since, without his acceptance, the donation would have failed. It will, I think, also clearly appear, in the course of the future pages, that the creation of the School, the great enlargement of its funds, and the erection of the building itself, are mainly due to my father.

In consequence of my father's acceptance, Mr. Dane sent to the Corporation of the College the following letter, offering a donation of ten thousand dollars.

TO THE PRESIDENT AND FELLOWS OF THE CORPORATION OF HARVARD  
UNIVERSITY.

Beverly, June 2nd, 1829.

GENTLEMEN :

As I have a long time wished to aid and promote the law branch in the said University, and, now, by the profits of my law work, can conveniently do it, I proceed to lay the foun-

dation of a professorship of law therein, and to provide for the appointment of a professor, and to aid in his support, in the manner following, and submit the same to your consideration.

In the first place, it shall be his duty to prepare and deliver, and to revise for publication, a course of lectures on the five following branches of Law and Equity, equally in force in all parts of our Federal Republic, namely: The Law of Nature, the Law of Nations, Commercial and Maritime Law, Federal Law and Federal Equity, in such wide extent as the same branches now are, and from time to time shall be administered in the courts of the United States, but in such compressed form as the professor shall deem proper; and to prepare, deliver, and revise lectures thereon as often as the said corporation shall think proper. But as the corporation may, after one course of lectures shall have been thus prepared, delivered and revised, on these branches, think it best to include in his lectures other branches of Law and Equity, that shall from time to time be in force in Massachusetts, I authorize the said corporation so to do; ever confiding in the discretion thereof, to select the State branches, the most important and the most national, that is, as much as may be branches the same in other States of the Union as in this; making lectures on this State law useful in more States than one, law clearly distinguished from that State law which is in force, and of use, in a single State only.

2d. I now appropriate ten thousand dollars, to be by me placed in the possession of the said corporation, on or before the first day of September next, as a fund forever, towards the support of the said professor, all the income whereof, and of such other moneys and funds as I may hereafter add, shall be paid over, annually or semi-annually, as the corporation may direct, to the professor for the time being; each year beginning on the first day of September.

3d. In conformity to the Constitutions of the United States, of Massachusetts, and of most of the other States, I declare that no religious test shall ever be required as a qualification

of this professorship, but each person who shall be appointed professor, shall, before entering on the duties of his office, make and subscribe a declaration in the words following: "I do solemnly declare that I will, to the best of my ability, perform the duties required of me, by the statutes under which I am now appointed — Professor of Law in Harvard University;" and that no oath or other declaration shall ever be required.

4th. It is my object that a professor shall always be appointed who shall be a Counsellor at Law, at least of seven years' standing at the Bar, and to insure a suitable appointment, from time to time, of a professor learned in the branches of Law and Equity aforesaid, and especially in the said five branches, I do declare that his residence at Cambridge shall never be required as a condition of his holding the office; believing the best professors will generally be found among judges and lawyers, eminent in practice in other places conveniently situated, and who, while professors, may continue their offices and practice generally; also thinking law lectures ought to increase no faster than there is a demand for them. Clearly, their great benefit will be in publishing them.

5th. As the Hon. Joseph Story is, by study and practice, eminently qualified to teach the said branches both in Law and Equity, it is my request that he may be appointed the first professor on this foundation, if he will accept the office, and in case he shall accept the same, it is to be understood that the course of his lectures will be made to conform to his duties as one of the Justices of the Supreme Court of the United States; and further, that time shall be allowed him to complete, in manner aforesaid, a course of lectures on the said five branches, probably making four or more octavo volumes; and that all the lectures and teachings of him, and of every professor so to be appointed, shall be calculated to assist and serve in a special manner, law students and lawyers in practice, sound and useful law being the object.

6th. The number of lectures, and the manner of delivering

them, I leave to the discretion of the corporation, as I do all other matters and things not contravening the rules or statutes herein contained, placing full confidence in its wisdom and judgment.

But as the present state of the law branch in the said University, and the times of meeting of the Overseers thereof, allow less time to prepare statutes and system than is desirable, I reserve, so far as may be consistently done, liberty to put, before the first of September next, the proper rules and statutes in the case into a more technical and intelligible form, strictly preserving the substance and principles herein contained.

Your obedient servant,

N. DANE.

This donation was accepted by the Corporation of the University, and in conformity with Mr. Dane's request, my father, on the 11th of June, was immediately elected the first Professor. The proceedings of the Corporation, in relation to the acceptance of the donation, were concurred in by the Board of Overseers, and a unanimous vote was given confirming my father's appointment.

At this time the Royall Professorship, which had been resigned by Chief Justice Parker, being still vacant, it was proposed to the Corporation that a Professor of Law should be appointed on the Royall foundation, who, in conjunction with the Dane Professor, should perform the duties of instruction. The report was accepted by the Corporation, and John H. Ashmun, Esq. of Northampton, who had been associated with Judge Howe in the charge of the Law School at that place, was appointed Royall Professor, and the appointment was concurred in by the Overseers.

On the 25th of August, 1829, Mr. Ashmun was inau-

gured as Royall Professor, and my father as Dane Professor. The Exercises were as follows:—

Introductory Prayer, by Rev. Dr. Ware.

Address in Latin, by the President, Hon. Josiah Quincy.

The Statutes of each Professorship read by Dr. Hedge.

Reply in Latin, by the Royall Professor elect.

Reply in Latin, by the Dane Professor elect.

Announcement of the Professors, by the President.

Inaugural Discourse in English, by Professor Story.

The inaugural Discourse pronounced by my father on this occasion, is one of his most finished literary productions. It treats of the value and importance of the study of the Law, and unfolds the nature and objects of the Professorship. A subject so purely legal in its character affords, as he complains, “little scope for elegant disquisition, and almost forbids those ornaments which gratify the taste and warm the imagination of the scholar,” but it is developed with such dignity of style, and enlivened by so many glowing and vigorous passages, that attention and interest are constantly sustained.

It opens with a vindication of Jurisprudence as a science, which “in its widest extent may be said to compass every human action, and in its minute details, to measure every human duty;” and even in its narrower view as a system of laws, “to have strong claims on the gratitude and admiration of mankind.” Those claims it proceeds to set forth, recommending the study of the Law as the duty of the legislator, as lending a grace and finish to the learning of the scholar, and as properly forming the basis of education in a Republican

Government, where Law is so greatly influenced by public opinion, and where every citizen is, in some measure, intrusted with the public safety. In a strain of manly eloquence, it then speaks of the morals of the law, and the duties of the lawyer, exhorting the student to acquire a just conception of the dignity and importance of his vocation, and not to debase it by a low and narrow estimate of its requisites or its duties, — but devoting to it earnest and laborious hours, to study it in the spirit of philosophy, history, and humanity. After a few vivid paragraphs on the eloquence appropriate to the Bar, he draws an outline of the duties of his Professorship, and gives a general sketch of the different departments of the Law of Nature, the Law of Nations, Maritime and Commercial Law, Equity, and the Constitutional Law of the United States, upon which he was to be required to lecture. The discourse concludes with a commendatory notice of Mr. Dane, and of his labors and donation.

In this discourse my father again attacks the doctrine asserted by Mr. Jefferson, that Christianity is not recognized in the Common Law. He says, —

“ One of the beautiful boasts of our municipal jurisprudence is, that Christianity is a part of the Common Law, from which it seeks the sanction of its rights, and by which it endeavors to regulate its doctrines. And, notwithstanding the specious objection of one of our distinguished statesmen, the boast is as true, as it is beautiful. There never has been a period, in which the Common Law did not recognize Christianity as lying at its foundations. For many ages it was almost exclusively administered by those, who held its ecclesiastical dignities. It now repudiates every act done in



violation of its duties of perfect obligation. It pronounces illegal every contract offensive to its morals. It recognizes with profound humility its holidays and festivals, and obeys them, as *dies non juridici*. It still attaches to persons believing in its divine authority the highest degree of competency as witnesses; and until a comparatively recent period, infidels and pagans were banished from the halls of justice, as unworthy of credit. The error of the Common Law was, in reality, of a very different character. It tolerated nothing but Christianity, as taught by its own established church, either Protestant or Catholic; and with unrelenting severity consigned the conscientious heretic to the stake, regarding his very scruples as proofs of incorrigible wickedness. Thus, justice was debased, and religion itself made the minister of crimes, by calling in the aid of the secular power to enforce that conformity of belief, whose rewards and punishments belong exclusively to God."

An interesting and highly characteristic correspondence between my father and Hon. John Quincy Adams, grew out of certain passages in this Discourse in which the genius and labors of Lord Mansfield and Lord Stowell were mentioned in terms of high praise, and the phrase "that philosophy which dwells not in vain imaginations and Platonic dreams," was used.

TO HON. JOSEPH STORY.

Quincy, September 25th, 1829.

MY DEAR SIR :

In offering you my sincere acknowledgment for the copy of your Inaugural Discourse which I have had the pleasure of receiving from you, I ought to discharge an arrearage of debt in the account of friendship and good office between us for similar favors before. There are times and seasons when

all the faculties of mind and body are so absorbed by the duties of the first class, that those of minor moment though not of inferior obligation, are involuntarily neglected. But the act of kindness though not duly reciprocated, is faithfully committed to the memory and is there cherished, perhaps with more durable gratitude than when its reception has been formally manifested. Yet upon this new opportunity being presented to me of returning you my thanks, I cannot let it pass without adding to them those which have been justly due to you heretofore.

I have read your discourse with great attention and great pleasure. I share in all your feelings with regard to the founder of this noble benefaction to our beloved Harvard, and to our country. My personal acquaintance with Mr. Dane has been so slight and is so remote in date, that he has probably no recollection of it; but I am no stranger to his character, nor to the eminent services he has rendered to his country. The Ordinance for the Northwestern Territory alone, entitles him to the gratitude of this nation, and of posterity, as long as the Union shall last.

I regretted that I could not be present at your Inauguration; but the rending of the heart with which it has lately pleased heaven to visit me and my family, has unfitted me for participation in any public festivity. Yet my heart was with you, and the anxious wish and fervent prayer that the founder, Mr. Dane, may realize all the excellent purposes of his design, and furnish to the rising generations of our native Commonwealth the means of improving the future ages of mankind, and of elevating at once the standard of our morals and of our laws.

Certain incidents, which occurred at the convivial board after your inauguration, and of which I had notice by the various animadversions upon them in the public journals, induce me to offer a few remarks which I should otherwise have thought unnecessary.

I lament that Mr. Dane should have been a member of the

Hartford Convention. I lament that he should have entertained the opinions which made it possible for him to be a member of that assembly. I more deeply lament that his name should appear to the Resolutions and to the final Report of that body. But this detracts not from the high respect which I have for his character, nor from the estimate I have formed of his services. I deem it the more necessary to say this to you inasmuch as you will recollect that during the last session of the Supreme Court of the United States at Washington, I informed you I was occupied in preparing a vindication of my own conduct and character, which necessarily involved in it a critical examination of the history and proceedings of the Hartford Convention; and that I asked of you as an act of friendship, when my manuscript should be completed, to receive and read it before it should be committed to the press, and to give me, as my friend, and as a friend of our country, your free and candid opinion of it, general and particular, that is, of the whole composition and of every part of it which you should think proper for publication or otherwise.

That manuscript is completed, and it embraces a strict and severe analysis of the proceedings of the Hartford Convention,—of their Resolutions and of their final Report. Although you encouraged my intended confidence in you, by a ready promise that you would perform for me the office of friendship which I requested, the relation into which you have since entered, both with Mr. Dane and with his patriotic Institution, has induced doubts in my mind whether a sentiment of delicacy might not now raise objections in yours, to the fulfilment of that engagement. My own confidence in your candor and judgment is unimpaired; and my desire of submitting the manuscript to your opinion as a friend has rather increased than abated. But “*in omni re considerandum est, et quid postules ab amico, et quid potiare a te impetrari*” — What I asked as a favor I would not impose as an unwelcome task. Before sending you my manu-

script, therefore, I would ascertain whether you still are disposed to peruse it with the eye of a censorious friendship, and with the balance of justice in the hand.

In that event, as an example of the freedom with which I should hope and expect you to perform the office, I will take the liberty of exposing to you two or three observations, which have occurred to me upon the perusal of your discourse.

In the first place, besides the general commendation which I would bestow upon it as a whole, I thank you especially for the vindication of the honor of our Law by the firm assertion at the bottom of the twentieth page, that Christianity is a part of the Common Law. The specious objection to which you allude deserves severer reprobation than you have passed upon it.

You say, page 46, that the Treatise of Grotius de Jure Belli et Pacis, was the *first* great effort in modern times to reduce into any order the principles of the Law of Nations. Was he not preceded by Albericus Gentilis?

I find, page 5, the word *inosculated*. Is it a misprint?

In your admirable recommendation of the Spirit of Philosophy to the Student of Law, you say, by way of exception, "that Philosophy which dwells not in vain imaginations and Platonic dreams." Is not this a severe reflection upon Plato? Is there in all antiquity a philosophy more deserving of profound study than that of Plato; which is, in fact, that of Socrates.

You speak in terms of unqualified admiration of Lord Mansfield and Lord Stowell. Is not Lord Mansfield the most responsible of all men of that age, for the war of the American Revolution? Was he not originally a Scottish Jacobite, with the principles of Sir Robert Filmer bred in the bone? Did he not carry them to the grave, and how much of them did he introduce into his system of Commercial Law, and fly-blow into the Common Law?

Is not Lord Stowell the most responsible man of our age

for the last war with Great Britain? What think you of the Salem Memorial, 1806, upon the rule of the war of 1756?

I pause for a reply; and remain with the highest regard and esteem,

Your friend,

J. Q. ADAMS.

TO HON. JOHN QUINCY ADAMS.

Cambridge, October 2d, 1829.

DEAR SIR:

Owing to some delay in the transmission I did not receive your letter of the twenty-fifth of September until the evening before the last, and I avail myself of my first leisure to reply to it. I sincerely thank you for the favorable expressions you have used respecting my discourse, and your criticisms are truly welcome to me, not only from the pleasure I feel in such confidence, but also from the consideration that it affords the highest proof of your attention to all the topics of the discourse. Allow me to make a few observations on this subject, before I proceed to notice other important matters in your letter.

I plead guilty to the use of the word "inosculated." Is your objection to the word itself, or to my use of it as inexact or incongruous?

In speaking of "Platonic dreams" I confess myself to have had in view rather the visionary speculations of his (Plato's) followers in other ages, than his own opinions. I have been accustomed, however, to consider that he himself, was singularly metaphysical and abstract in some of his notions, both as to spirit and matter. So I have learned, not from reading his writings, but from the criticisms of those who have written the History of Philosophy.

I have spoken, it is true, in strong terms of praise of Lord Mansfield and Lord Stowell, but that praise respects alto-

gether their legal and not their political character. I have always deemed Lord Mansfield in a great measure, the author of the Commercial Law in England, and that it is a system of great beauty and equity. Am I wrong in this respect? I am not aware that any portion of his administration of the Common Law is reprehensible, though it must be admitted that some of his decisions are erroneous. What Judge has not made some erroneous decisions which were important in their consequences! The most objectionable of his decisions are upon the Law of Libel, at least as far as I now recollect them, — and yet, after all, notwithstanding the more recent decisions, and the statutes of Mr. Fox on the subject, it is very easy to trace in the later decisions in England the spirit of his decisions. If he was wrong, therefore, he has not stood alone, and is scarcely more obnoxious to censure than some of his contemporaries and successors. I am not his indiscriminate admirer or advocate, but in Commercial Law I am not prepared to abate any portion of my praise.

As to Lord Stowell I may again remark that I have nothing to say as to his political character. But as a civilian, I cannot but deem him very eminent. He sat thirty years in the Admiralty. I have read all his printed judgments and must confess, that generally, though not universally, they have my unqualified praise. On some principles one would differ, but there again, I may say that these differences are incident to national position or to personal opinion. The application of the rule of 1756 is that in which he bore most powerfully upon American Commerce and American rights. But even here, if you assume that rule to be correct as a part of National Law, his application of the rule, though in some cases harsh, was generally within its reach. I for one, have never admitted the legal existence of the rule. The Salem Memorial denied its justice. I plead guilty as to the authorship of that Memorial. But if I were not convinced that it was founded in error, I should unhesitatingly admit my error. But after all, I am bound to



do this justice to Lord Stowell, and to state that he had British authority for the rule, and that he did not create it. It is one of those questions upon which enlightened men may honestly differ. If Lord Stowell led the way the last war, in any measure, I cannot but believe his opinions, as a Judge, were sincere. He might relax the strict belligerent rule where his own government allowed it. But I have no reason to suppose that he ever administered a stricter law than he conscientiously believed right. I have not avowed that he was always a safe guide. But is he not the ablest expounder of the Law of Nations in modern times? Compare him with the Judges of the Prize Courts of Continental Europe.

I do not put these questions to you expecting a reply to them, which I am aware would occupy too much of your time, but merely to put my reasoning into a distinct form.

In respect to the Hartford Convention I am glad that your letter alludes to it, as connected with the University dinner given in honor to Mr. Dane as founder of the Law Professorship. The subject was introduced on that occasion quite unexpectedly to me, and I was asked, in a pleasant way, to say how I could vindicate Mr. Dane from such an egregious fault. In reply, I ventured to narrate a conversation which took place between us before the Convention was held, and also a conversation between Mr. Dexter and Mr. Prescott, (the latter having been referred to specially in a speech at the same dinner,) in which Mr. Dane, and Mr. Prescott expressly disclaimed any intention to promote any measure calculated to dissolve the Union in this Convention. This was the substance of all I had occasion to say at that dinner, and it has been most grossly misrepresented in the newspapers. I authorized a short statement to be printed in some of them in reply to these misrepresentations, which I trust you have seen.

I feel greatly obliged to you for the confidence which you reposed in me at Washington respecting your intentions of

a future vindication of your opinions respecting the views of the federal party in New England, as to a dissolution of the Union. Some change has since taken place with reference to my relation to Mr. Dane, but I am aware of none that would prevent me from reading your manuscript with a determination frankly to offer any suggestions for your consideration, which might strike my mind. At the same time, I cannot but feel that you may very properly indulge the belief that I might naturally wish, that passages affecting Mr. Dane as one of that body, and which you might deem essential to the true posture of your defence, might be varied or moderated. In short, I cannot but suppose that every thing you could write would bear on your vindication in a general view, without favor or affection; and therefore, if the manuscript should be submitted to my perusal, I should give my suggestions not so much upon the general scope of the reasoning, or its cogency and force, as to ask your revision of any passages the tone of which might strike me as requiring your own deliberate revision. I shall be most happy to be of any aid which I can in any such respect, if you shall on the whole deem it useful to you. At the same time I shall not feel myself authorized to draw any conclusions, if, looking to my new appointment, you should think that the delicacy of my situation would render my examination of your manuscript no longer important to you. I wish you, therefore, to act in this matter as you may deem best, and shall be entirely satisfied with the result.

While upon this subject, I take leave to add, that in the many conversations which have occurred on the subject since my return to Massachusetts, I have never heard a single doubt breathed respecting the integrity of your conduct, or the sincerity of your opinions. Those who were the least friendly to you, never intimated the slightest doubt, that you were, in what you said, governed by a high sense of truth and honor and belief. They thought you were under a mistake, but not wilfully wrong. I think, therefore, that

so far as your honor is concerned, a publication may be postponed as long as you choose without suspicion of any change of opinion. There is great tranquillity in the public mind, as far as I can judge, and no disposition to revive the controversy in a manner unfavorable to yourself. Nothing that passed at the dinner alluded in the slightest manner to you.

I find, in looking over my letter, that I have omitted to notice your remark as to my speaking of Grotius's work being the first great effort in systematizing the Law of Nations, and you ask if I have forgotten Albericus Gentilis. I own the work of Gentilis, and certainly value his labors; but though the work is earlier than that of Grotius, and is a respectable compend, I hardly thought I ought, in so general a discourse, to speak of it as a great effort. I am glad, however, to be reminded of the omission, and in my lectures I shall take care to do him more exact justice.

You will observe that my letter bears date at an early day of the month, and now (the 11th,) I am concluding it. The truth is, that it was nearly finished when I was called away from Cambridge, to attend to judicial and other pressing avocations, and it is only since my return home, yesterday, that I have found any leisure to finish it. I hope you will accept this as an excuse for the tardiness of my reply. I hope to have the pleasure of seeing you at Quincy before I go to Washington, and after my circuit duties are over. My intention is to make you a visit as soon as I can command my leisure, but that, with my new duties, is not very easy.

Believe me, with the highest esteem and respect,

Your obliged friend,

JOSEPH STORY.

TO HON. JOSEPH STORY.

Quincy, November 4th, 1829.

MY DEAR SIR:

Oppressed as you must be with the various duties of your two professions, your candid and friendly answer to my letter of the 25th of September was certainly not detained beyond a term of reasonable expectation, but rather came in anticipation of that which I had foreseen. Without so valid an apology, my reply has been yet longer postponed; but the topics upon which I have taken the liberty of submitting to your consideration a few remarks, are of a nature to need no precipitation in coming to the conclusions, which may result from a mature and deliberate consideration, and to which a return, after lingering meditation perhaps more than once, may not be without its usefulness.

With the explanation which you have given of your present sentiments, and of the relations in which you stand to the newly instituted Professorship of Law, and its founder, I shall persist in the purpose of submitting to your friendly examination and censure the manuscript which a due regard for the good opinion of my country in future times has dictated. But as an immediate publication of it is not necessary, and as it may perhaps be rendered less unworthy by the reflections, which you may bestow upon it, by passing the previous ordeal of a cool revision by myself, I shall probably not trouble you with it until the ensuing spring, after the close of the next session of the Supreme Court. As an historical document, I wish it to be divested of every feeling not called for by the honor and interest of my country.

To return to your discourse. You inquire if my objection to the word *inosculated* was to the word itself or to your use of it? I had never before seen or heard the word used, and by referring to the primitive of its derivation it seemed inappropriate to the sense in which it was used. I thought it might be a misprint for *inoculated*, but if not, was dubious of its meaning.

I was charmed with that passage of your discourse in which you so earnestly recommend to your future pupils the study of philosophy; but I could not reconcile with it the apparent exclusion of the works of Plato, by the slighting expression of Platonic dreams. You observe, that the expression was intended rather for some of his followers, but that you had taken up an idea not from his own writings, but from the character given of them by others, that he himself was occasionally absurd and visionary.

My dear friend, do *me* the favor to read his treatise upon Justice, commonly called the Republic, and his work upon Laws, which is more peculiarly his own. Read them under the disadvantage of my translation, and if, after that, you shall think his works ought to be excluded from a recommendation of the study of philosophy to young men upon the threshold of life, I will pursue the discussion with you no further. You will find absurdities and perhaps visions, but where do you not find them? Are they not to be found in Bacon? in Newton? in Locke? The mind of man is a planet, wandering in its nature; and logic, or the art of close and systematic reasoning, itself originated in the school of Socrates and Plato. In that school it was first learnt by Aristotle; by whom it was first given to the world.

The very word *philosophy* originated in the same school. The Grecian language is the mother tongue of philosophy, and the writings of Plato and Aristotle are her grammar and dictionary. The new Organ of Bacon has enabled man to make one step farther in the pursuit of natural philosophy; but the teachers of morals and politics and laws, after drinking at Siloa's brook, that flowed fast by the oracles of God, and fixing their eyes upon the Star of Bethlehem, must still resort to the fountains of Castalia and to the academy of Plato.

A minute examination of the characters of Lord Mansfield and Lord Stowell would lead me too far. I consider them as men entitled to very different degrees of consideration;

but they were both Courtier Judges. I remember hearing Mr. John Lowell, in a forensic dispute, when he took his Master's degree, say, in reply to his antagonist, who, upon some point of Constitutional English Law, had quoted Blackstone's Commentaries, that he might as well have quoted the Court Calendar. This, as respected Blackstone, was strong language; but it is true of Mansfield's decisions, notwithstanding his braggart virtue in Wilkes's case. I am afraid it is too true of Lord Stowell's, notwithstanding his theoretic independence in the case of the Swedish Convoy.

Of the character of Lord Mansfield as a statesman, lawyer and moralist, I have a very indifferent opinion. As a statesman, his genius cowered before that of Chatham. As a lawyer, before that of Camden, and as a moralist his countenance of English smugglers against foreign laws has been justly censured by the Jurists of Continental Europe. I speak of prominent incidents in his life and even without reference to his bitter and rancorous hatred of our country, and opposition to her cause. He was a Scottish Jacobite, metamorphosed by the course of events into a sycophant of the House of Hanover, but in changing his bottom, he carried his principles with him, from the sinking to the floating ship. These principles he had learnt in the Roman Law, which was the law of Scotland; a law of wisdom but of servitude; the law of a great commercial empire, digested in the days of Justinian and containing all the principles of justice and equity suited to the relations of men in society with each other;—but a law under which the head of government was "*Imperator Augustus, legibus solutus.*" To this system Lord Mansfield added the Marine Ordinance of Louis XIV. and from these radical sources engrafted his body of Commercial Jurisprudence upon the stock of the Common Law of England,—a law almost entirely agricultural; more than sufficiently poisoned by the feudality of the Norman conquest, but still illuminated with principles favorable to personal liberty, at least with Jury Trial and the

Habeas Corpus. These were unknown to the Roman Law, and if Lord Mansfield did not expunge them from the law of England, it was not for want of his exertion so to do. His principles, in our controversy with Great Britain, flowed naturally from his fountain of Roman Law, which knew as little of the link between taxation and representation as of Habeas Corpus and Jury Trial.

Of Lord Stowell I would speak with more hesitation and reserve; but the Rule of the War of 1756, and his revival of it, I would hope is not forgotten, and wherever in this Union his panegyric is pronounced, the British Manifesto of 1812, against us, should form one of the sprigs of his laurels. A slight personal acquaintance with him in England has left upon my mind a favorable impression of his social qualities, and my admiration of his talents is qualified only by the regret that they have not been employed in promoting the peace of nations, or in vindicating the inextinguishable rights of human kind.

But I am trespassing upon your time, and will conclude with an assurance of respect and friendship unabated,

J. Q. ADAMS.

TO HON. JOHN QUINCY ADAMS.

Cambridge, November 24th, 1829.

DEAR SIR:

On the eve of my departure for my Rhode Island Circuit, I had the satisfaction of receiving your late letter. I have read it with great pleasure and instruction. In the first moment of my leisure I shall read the Republic of Plato, and the other work to which you refer me. If I have done him any injustice I shall take the earliest opportunity to make honorable amends. . . .

In respect to Lord Mansfield's legal attainment and judicial character, I confess that I entertain a far higher opinion than you seem to allow him. Nor am I at all disposed to admit that Lord Camden was, as a lawyer, his equal. In

truth, what I have seen of Lord Camden's judicial opinions has not enhanced my respect for him. The brilliancy of his character as a statesman has somewhat disappointed me in looking on him as a lawyer.

I have been a diligent reader of Lord Stowell's decisions. And though certainly I do not agree in all his opinions, the mass of them appear to me remarkable for sagacity, earnestness, and sound administration of public law. I could except some opinions on points of public law, upon which different nations contend for different principles, because these may fairly be held open for controversy by minds of equal ability and equal independence. With such exceptions, I hardly know where I can look for so much practical wisdom in decision as to Lord Stowell's judgments. Of course, I can speak only of his judicial character, having but an imperfect knowledge of his opinions as a statesman.

My authority for "inosculate," in the sense in which I used it, is Bishop Berkley, as cited in Todd's Johnson's Dictionary.

My Courts are not quite over. But when they are I hope to have the pleasure of visiting you. I need scarcely add, that I will endeavor scrupulously to discharge the office which you propose in respect to your manuscript vindication.

I beg you to believe me,

With the highest respect and esteem,

Your much obliged friend,

JOSEPH STORY.

Speaking of his new appointment, my father says, in a letter written to Richard Peters, Esq., August 1st, 1829, —

"I have been driven to accept the Dane Professorship of Law in Harvard University, and am now just beginning to write my inaugural discourse, which is to be delivered on the twenty-fifth of August. It is truly a formidable task. On



the first of September, I am to remove to Cambridge, to take up my permanent residence there. The Law School opens on that day. If you read the third number of the *American Jurist*, you will see the objects and nature of the foundation. They show a liberal mind. I mean to lend all my leisure to accomplish this noble design."

It was upon this new field that my father now entered. Quitting Salem in September, he removed with his family to Cambridge, and commenced at once the duties of his office. From 1817 to 1829, the average annual number of students in the Law School had been about eight, and during the year preceding the appointment of my father, the number had been reduced to one. But his name and reputation immediately created a new attraction, and scholars at once began to gather about him. On October 20th, 1829, before he had yet fairly seated himself in the Professorial Chair, he thus writes to S. Greenleaf, Esq.:

"We have at present twenty-seven law students at Cambridge, with a prospect of more. I perceive that there is a vast labor before me."

Nor was this expectation disappointed. The number of students increased during the first year to thirty, and he found his time almost entirely occupied by the duties of his office, upon which he at once entered with zeal.

Despite the numerous and pressing engagements by which he was surrounded, he yet found time to prepare and deliver, in November of this year, a discourse before the Boston Mechanics' Institute, at the opening of their annual course of lectures. This is an essay on the value

of the Mechanic Arts, and the influence of Science. It is popular in its tone, copious in its illustrations, and was specially adapted to the occasion. In the course of it, he gives the following interesting account of the building and sailing of the first steamboat by Fulton, as he received it from the lips of that distinguished mechanic.

“ When,” said Fulton, “ I was building my first steamboat at New York, the project was viewed by the public either with indifference, or with contempt, as a visionary scheme. My friends, indeed, were civil, but they were shy. They listened with patience to my explanations, but with a settled cast of incredulity on their countenances. I felt the full force of the lamentation of the poet, —

“ Truths would you teach, or save a sinking land ?  
All fear, none aid you, and few understand.”

As I had occasion to pass daily to and from the building-yard, while my boat was in progress, I have often loitered unknown near the idle groups of strangers, gathering in little circles, and heard various inquiries as to the object of this new vehicle. The language was uniformly that of scorn, or sneer, or ridicule. The loud laugh often rose at my expense ; the dry jest ; the wise calculation of losses and expenditures ; the dull, but endless, repetition of the Fulton folly. Never did a single encouraging remark, a bright hope, or a warm wish, cross my path. Silence itself was but politeness, veiling its doubts, or hiding its reproaches. At length the day arrived, when the experiment was to be put into operation. To me it was a most trying and interesting occasion. I invited many friends to go on board to witness the first successful trip. Many of them did me the favor to attend, as a matter of personal respect ; but it was manifest, that they did it with reluctance, fearing to be the partners of my mortification, and not of my triumph. I was well aware,

that in my case there were many reasons to doubt of my own success. The machinery was new and ill made ; many parts of it were constructed by mechanics unaccustomed to such work ; and unexpected difficulties might reasonably be presumed to present themselves from other causes. The moment arrived, in which the word was to be given for the vessel to move. My friends were in groups on the deck. There was anxiety, mixed with fear, among them. They were silent, and sad, and weary. I read in their looks nothing but disaster, and almost repented of my efforts. The signal was given, and the boat moved on a short distance, and then stopped, and became immovable. To the silence of the preceding moment now succeeded murmurs of discontent, and agitations, and whispers, and shrugs. I could hear distinctly repeated, 'I told you it would be so — it is a foolish scheme — I wish we were all out of it.' I elevated myself upon a platform, and addressed the assembly. I stated, that I knew not what was the matter ; but if they would be quiet, and indulge me for a half hour, I would either go on, or abandon the voyage for that time. This short respite was conceded without objection. I went below, examined the machinery, and discovered that the cause was a slight mal-adjustment of some of the work. In a short period it was obviated. The boat was again put in motion. She continued to move on. All were still incredulous. None seemed willing to trust the evidence of their own senses. We left the fair city of New York ; we passed through the romantic and ever-varying scenery of the highlands ; we descried the clustering houses of Albany ; we reached its shores ; and then, even then, when all seemed achieved, I was the victim of disappointment. Imagination superseded the influence of fact. It was then doubted, if it could be done again ; or if done, it was doubted if it could be made of any great value.

“Such was the history of the first experiment, as it fell, not in the very language which I have used, but in its substance, from the lips of the inventor. He did not live, indeed, to

enjoy the full glory of his invention. It is mournful to say, that attempts were made to rob him, in the first place, of the merit of his invention, and, next, of its fruits. He fell a victim to his efforts to sustain his title to both. When already his invention had covered the waters of the Hudson, he seemed little satisfied with the results, and looked forward to far more extensive operations. My ultimate triumph, he used to say, my ultimate triumph will be on the Mississippi. I know, indeed, that even now, it is deemed impossible by many, that the difficulties of its navigation can be overcome. But I am confident of success. I may not live to see it; but the Mississippi will yet be covered by steamboats; and thus an entire change be wrought in the course of the internal navigation and commerce of our country.

“And it has been wrought. And the steamboat, looking to its effects upon commerce and navigation, to the combined influences of facilities of travelling and facilities of trade, of rapid circulation of news, and still more rapid circulation of pleasures and products, seems destined to be numbered among the noblest benefactions to the human race.

But the exhausting labors of this year were not sufficient to make him forgetful of the claims of friendship. With a characteristic generosity, he devoted his services gratuitously to the assistance of his friend, Dr. Francis Lieber, who was then engaged in preparing the *Encyclopedia Americana*, a work based upon the German *Conversations Lexicon*, and in part a modified translation of it, but enriched with a large number of original articles. For the third volume of this valuable work, my father prepared, during this year, the articles on “Common Law,” “Congress of the United States,” “Conquest,” “Contracts,” “Corpus Delicti,” and “Courts of England and the United States.”

Nor did his labor cease here. For the subsequent volumes of this work, he afterwards contributed the articles on "Criminal Law," "Death Punishment," of "Domicil," "Equity," "Evidence," "Jury," "Lien," "Law, Legislation, and Codes," "Natural Law," "National Law," "Prize," and "Usury." These articles, which are written with his usual ability, comprise more than 120 pages, closely printed in double columns. But a higher interest than that growing out of their intrinsic worth belongs to them. They were labors dedicated purely to friendship, and illustrate a generosity which is as beautiful as it is rare.

In January, his professorial occupations were interrupted by his judicial duties at Washington. In the judgments of which he delivered during this session of the Supreme Court, that in *Inglis v. The Trustees of Snug Harbor* is the most important. It was an opinion dissentient on one point, and concurrent in all others. The case arose upon a writ of right, brought for the recovery of certain real estate in New York, which had been devised to the Chancellor of that State and other persons, and their successors, in their official capacity, as trustees, to erect and maintain a Marine Hospital for supporting aged and decrepid sailors, under the name of "The Sailor's Snug Harbor." Various questions arose in this case, 1st, Whether the devise itself was valid, so as to divest the heir at law of his legal estate, or to affect it in his hands with a trust,—which opened the doctrines to be applied to the interpretation of the devise, and its nature and effect. It was upon this point, that my father dissented from the opinion of the Court, holding that the devise did not divest the heir at law of his legal estate, but only cre-

ated a trust. 2d. Whether or not the demandant was an alien, so as to incapacitate him from taking lands by descent, which question involved a thorough discussion of the law relating to alienage. 3d. As to the effect of a non-entry of an ancestor intermediate between the deviser and the demandant, through whom the latter claimed title, and of the fact of adverse possession by the trustees from the time of the devise. 4th. As to the construction of the Absconding and Debtor Acts of 1786 and 1801, of New York; and 5th. Whether as the count in the cause was for the entire right in the premises, the demandant could recover a less quantity than the entirety. This last question gave rise to a discussion of the Law of Real Property, in the course of which all the old cases bearing on the subject were thoroughly examined, and some of the doctrines of that intricate and technical portion of the law were unravelled. This able and learned judgment is one of my father's most important labors in Real Law.

In December of this year, he lost, from among his fellow Judges, one of his warmest friends, Mr. Justice Washington, to whose death he thus alludes :

TO RICHARD PETERS, ESQ.

Cambridge, December 18th, 1829.

MY DEAR SIR :

I thank you for your late letter. The death of our friend, Judge Washington, was a fit close of such a life, and I feel quite desolate whenever I recur to my own loss. The particulars of his closing hours have much interested me, but his fears of being buried alive quite surprise me; and his calmness in meeting and preparing for the event, are just such as I cannot but envy. . . .

The choice of Judge Hopkinson to deliver an eulogy upon Judge Washington, is soothing to my soul; no man could perform the task more worthily, either for matter or manner, for truth or force. Give my kindest regards to him.

In haste, most truly and affectionately yours,

JOSEPH STORY.

Upon receiving information of the death of Mr. Justice Washington, my father wrote a notice of his character for the *Boston Daily Advertiser*, of which he says, in a letter to Richard Peters Esq. dated December 10th, 1829,

“I hope you have received my little sketch of our lamented friend, Judge Washington. I wrote it without rising from my table. It is my sincere estimate of his character.”

The “sketch” was as follows :

“The death of Mr. Justice Washington, is an event, which cannot but cast a gloom upon all the real friends of our country. He was born on the 5th of June, 1762, and was, of course, now in the sixty-eighth year of his age. It is well known that he was the nephew, and, we have a right to say, the favorite nephew of President Washington. The latter bequeathed to him, by his will, his celebrated estate on the Potomac, Mount Vernon, which was the residence of this great patriot during the most brilliant periods of his life, the delightful retreat of his old age, the scene of his dying hours, and the spot, where, by his own order, his ashes now repose, in the same tomb with his ancestors. To him, also, President Washington gave all his valuable public and private papers, as a proof of his entire confidence and attachment, and made him the active executor of his will. Such marks of respect from such a man, — the wonder of his own age,

and the model for all future ages, — would alone stamp a character of high merit, and solid distinction, upon any person. They would constitute a passport to public favor, and confer an enviable rank, far beyond the records of the herald's office, or the fugitive honors of a title.

“ It is high praise to say, that Mr. Justice Washington well deserved such confidence and distinction. Nay, more. His merits went far beyond them. He was as worthy an heir, as ever claimed kindred with a worthy ancestor. He was bred to the law in his native state of Virginia, and arrived at such early eminence in his profession, that as long ago as 1798, he was selected by President Adams, as a Justice of the Supreme Court, upon the decease of the late Judge Wilson, of Pennsylvania. For thirty-one years he held that important station, with a constantly increasing reputation and usefulness. Few men, indeed, have possessed higher qualifications for the office, either natural or acquired. Few men have left deeper traces, in their judicial career, of every thing which a conscientious judge ought to propose for his ambition, or his virtue, or his glory. His mind was solid, rather than brilliant; sagacious and searching, rather than quick or eager; slow, but not torpid; steady, but not unyielding; comprehensive, and at the same time cautious; patient in inquiry, forcible in conception, clear in reasoning. He was, by original temperament, mild, conciliating, and candid; and yet he was remarkable for an uncompromising firmness. Of him it may be truly said, that the fear of man never fell upon him; it never entered into his thoughts, much less was it seen in his actions. In him the love of justice was the ruling passion; it was the master-spring of all his conduct. He made it a matter of conscience to discharge every duty with scrupulous fidelity and scrupulous zeal. It mattered not whether the duty were small or great, witnessed by the world, or performed in private, every where the same diligence, watchfulness, and pervading sense of justice were seen. There was



about him a tenderness of giving offence, and yet a fearlessness of consequences, in his official character, which I scarcely know how to portray. It was a rare combination, which added much to the dignity of the bench, and made justice itself, even when most severe, soften into the moderation of mercy. It gained confidence, when it least seemed to seek it. It repressed arrogance, by overawing or confounding it.

“To say, that, as a judge, he was wise, impartial, and honest, is but to attribute to him those qualifications, without which the honors of the bench are but the means of public disgrace, or contempt. His honesty was a deep, vital principle, not measured out by worldly rules. His impartiality was a virtue of his nature, disciplined and instructed by constant reflection upon the infirmity and accountability of man. His wisdom was the wisdom of the law, chastened, and refined and invigorated by study, guided by experience, dwelling little on theory, but constantly enlarging itself by a close survey of principles.

“He was a learned judge. I do not mean by this that every day learning, which may be gathered up by a hasty reading of books and cases; but that, which is the result of long continued, laborious services, and comprehensive studies. He read to learn, and not to quote; to digest and master, and not merely to display. He was not easily satisfied. If he was not as profound as some, he was more exact than most men. But the value of his learning was, that it was the key-stone of all his judgments. He indulged not the rash desire to fashion the law to his own views; but to follow out its precepts with a sincere good faith and simplicity. Hence he possessed the happy faculty of yielding just the proper weight to authority, neither, on the one hand, surrendering himself blindfold to the dictates of other judges, nor, on the other hand, overruling settled doctrines upon his own private notion of policy or justice.

“In short, as a magistrate, he was exemplary and able, one whom all may reverence, and but few may hope to equal.

"But, after all, it is as a man, that those who knew him best, will most love to contemplate him. There was a daily beauty in his life, which won every heart. He was benevolent, charitable, affectionate, and liberal, in the best sense of the terms. He was a Christian, full of religious sensibility, and religious humility. Attached to the Episcopal church by education and choice, he was one of its most sincere, but unostentatious friends. He was as free from bigotry, as any man; and at the same time that he claimed the right to think for himself, he admitted without reserve the same right in others. He was, therefore, indulgent even to what he deemed errors in doctrine, and abhorred all persecution for conscience' sake. But what made religion most attractive in him, and gave it occasionally even a sublime expression, was its tranquil, cheerful, unobtrusive, meek, and gentle character. There was a mingling of Christian graces in him, which showed, that the habit of his thoughts was fashioned for another and a better world. Of his particular opinions on doctrinal points, it is not my intention to speak. Such as they were, though good men may differ as to their correctness, all must agree, that they breathed the spirit of an inquisitive Christian.

"He was a real lover of the Constitution of the United States; one of those who assisted in its adoption, and steadily and uniformly supported it through every change of its fortunes. He was a good old-fashioned federalist, of the school of the days of Washington. He never lost his confidence in the political principles which he first embraced. He was always distinguished for moderation, in the days of their prosperity, and for fidelity to them, in the days of their adversity.

"I have not said too much, then, in saying that such a man is a public loss. We are not, indeed, called to mourn over him, as one who is cut off prematurely in the vigor of manhood. He was ripe in honors, and in virtues. But the departure of such a man severs so many ties, interrupts so many delights, withdraws so many confidences, and leaves such an aching void in the hearts of friends, and such a sense

of desolation among associates, that, while we bow to the decree of Providence, our griefs cannot but pour themselves out in sincere lamentations."

The following passages, selected from letters written during the session of the Supreme Court at Washington in 1829-1830, allude to the celebrated debate on the Land Bill, in which Mr. Webster and Mr. Hayne took so prominent a part; and to the publication of the fourth volume of Jefferson's Correspondence.

TO HON. JUDGE FAY.

Washington, February 15th, 1830.

MY DEAR FRIEND:

I thank you for your half of the letter I lately received, and still more for the better half from another source, which, not intending to raise any domestic strife, I must say was quite interesting. . . .

Have you seen Mr. Jefferson's Works? If not, sit down at once and read his fourth volume. It is the most precious melange of all sorts of scandals you ever read. It will elevate your opinion of his talents, but lower him in point of principle and morals not a little. His attacks on Christianity are *à la mode de Voltaire*; and singularly bold, and mischievous. Few public men have escaped his reproof; but the Federalists are dealt with in terms of unmeasured harshness.

I wish I had some news to write you, but what can a man do, whose whole circuit is from his chamber to the Court-room and back again? Give my love to Mrs. Fay, and Harriet, and believe me,

Your affectionate friend,

JOSEPH STORY.

TO MRS. SARAH WALDO STORY.

Washington, January 29th, 1830.

MY DEAR WIFE:

Nothing new has occurred since I last wrote you, excepting a very vivid controversy in the Senate between Mr. Webster and Mr. Hayne of South Carolina. The latter gentleman, in a speech last week, went into an acrimonious and disparaging tirade against New England, which drew from Mr. Webster a very bold and powerful reply. Mr. Hayne retorted in a long speech of two days, and was more severe than at first. Mr. Webster occupied two days in a second reply. The last speech, in the opinion of friends and foes, was the ablest he ever delivered at any time in Congress. He subdued Mr. Hayne, who concluded the debate in a mild and amicable tone. The whole debate was a vindication of New England on the one side, and an accusation of her on the other; and a discussion of the great Constitutional principles of the Government. The session will, I am satisfied, be stormy. The calm was deceitful and but temporary, and there are now before the Houses some subjects of great irritation, which will draw after them violent debates. . . .

It is now time for me to go to Court. Give my best regards to Mrs. Fay and the philosopher. Tell him I have many rare anecdotes of men and things for his philosophical ear, when we meet.

God bless you, and believe me most truly

Your affectionate husband,

JOSEPH STORY.

In March, 1829, Mr. Justice M'Lean was appointed in the place of Mr. Justice Trimble, and Mr. Justice Baldwin took the seat vacated by the death of Mr. Justice Washington. Of the appointment of Mr. Justice

Baldwin, my father says, in a letter dated January 31st, 1839, to my mother, —

“ We have just had an appointment made of a Judge in the stead of my lamented friend Judge Washington. It is Mr. Henry Baldwin, of Pittsburgh, in Pennsylvania. The appointment is quite satisfactory to those who wish well to the country and the Court. I have a slight acquaintance with Mr. Baldwin, but not enough to enable me properly to estimate his qualifications. At present, I think quite well of the appointment.”

The appointment of Mr. Justice M’Lean was exceedingly agreeable to my father, and an intimate friendship was established between them, from which he received great pleasure, and which remained unbroken to the day of his death. He had entire confidence in Mr. Justice M’Lean’s purity of purpose, and great respect for his talents, and in after years was warmly interested that he should become a candidate for the Presidency.

During this session of the Court, his thoughts often turned homewards towards the Law School, in which he had already acquired a deep interest. In a letter written on March 10th, 1830, to Professor Ticknor, he says, —

“ I shall be glad to return home, and work with the Law Students. I am impatient for leisure to prepare some written lectures, for there is a terrible deficiency of good elementary books.”

Upon his return from Washington he devoted himself with great assiduity to his professional duties. Instead

of reading a series of formal and written lectures, his method of teaching was by familiar discourse and conversational commentary. A stated portion of some text-book was allotted at every exercise as the subject to be treated at the next meeting. In this the students prepared themselves. My father commenced by making general remarks upon the subject, and sketching broadly the principles applicable to it. Questions were then proposed to the students, who, in turn, whenever any difficulty presented itself, freely questioned the professor. The recitation was not at all confined to the text-book; but the general principles laid down in it formed the theme of a full and free commentary, in the course of which their various modifications and exceptions were brought out, and copiously illustrated in every shade of differences. The book constituted merely the starting-goal, from which wide excursions were made into every cognate province of the law, from which matter for elucidation, ornament, or interest could be gathered. My father's untiring enthusiasm, his copious learning, and his extraordinary fluency, enabled him to carry out this plan with comparative ease to himself. Roger North, in his *Life of Lord Keeper Guildford*, describes him as a "good put-case." My father was entitled to the same praise. His readiness of invention was peculiarly exhibited in the rapidity with which he created fictitious cases for the illustration of the question under consideration, and the facility with which, after having supposed a case, to illustrate a general principle, he shaped its circumstances so as to expose the various modifications and exceptions to which it was subject. The figure changed with every turn, like the pattern in the kaleidoscope. He twisted

the familiar incidents of the day, into illustrations of legal principles, — began by telling a story, and then suddenly asked how the law would apply to it; so that oftentimes the student, who thought he was listening to a tale, found himself in the midst of a legal discussion. Thus he attracted the mind along, instead of driving it. Alive himself, he made the law alive. His lectures were not bundles of dried fagots, but of budding scions. Like the Chinese juggler, he planted the seed and made it grow before the eyes of his pupils into a tree.

So vivacious was he, and so prodigal in his learning, that the fear of every new comer was, lest he should exhaust himself. Each lecture seemed an exception at first, but the stream never ceased. It went pouring on its fresh, sparkling waters, with a never-failing fulness.

He had that rarest of all gifts, the faculty of communicating knowledge. The learning of most men is useless to all but themselves. It is in heaps of unsmelted gold or bullion, too heavy to be transferred with ease. His was the current coin of thought, as negotiable as valuable. Nor was he niggardly in bestowing it. The sun is not more lavish of its light, than he was of his knowledge. To smooth the way of the law for beginners, to help the weak through its doubtful and intricate passes, to stimulate the uninterested, and to partake in the zeal of the ardent, was to him an endless joy. His own enthusiasm imparted itself magnetically to his hearers. His pupils learned by sympathy, or, to use our fine Saxon phrase, — by heart. There was no embarrassing reserve, no harshness of manner, no unsympathizing self-sufficiency, to clog the channels through which instruction flowed forth. But on the contrary, he assimilated

lated himself to his audience, put them at their ease, and travelled with them on their way, as if he had just passed over it before, intent to point out its leading paths and its commanding prospects. He clothed his teaching with such fascinating forms, — investing naked principles with the drapery and color of actual illustration, — sustaining the attention by continual allusions to interesting incidents and anecdotes, which he interwove with his lectures, — stimulating the ambition by eloquent appeals and exhortations, as well as by holding up as examples the lives of distinguished men with whom he had come in contact, — and arousing the timid by recounting the victories won by diligence over difficulties, and discouragements, — that he who felt no quickening of the pulse, no blazing of his ambition, must have been dull and hopeless indeed. Often the hour of exercise passed without his knowing it, while he expatiated on the doctrines of the law; and often, as the college bell would break in upon his sentence, he would suddenly stop and exclaim — “But, gentlemen, there is the bell, I should not have thought it. We will go on to-morrow.”

His familiar bearing to the students invariably attached them to him. Many, who had come determined not to like him, and who had been brought up to consider his political views heretical, and his constitutional opinions unsound, ended by becoming his ardent advocates and admirers. Affection begets affection. In the students he was truly interested. He always called them “my boys,” and felt towards them as if they were all members of one family with him. He was as familiar to them as if he were one of them, assuming no airs, and



claiming no formal respect. Yet there was never an occasion where he received from them any but the most respectful consideration. He exaggerated all their good traits, and was blind and deaf to their faults ; and whenever he was forced to know of the misconduct of any one of them, it gave him sincere pain. His interest in them outlived their term as students and accompanied them into life. Earnestly he watched them in their professional career, rejoicing in tidings of their success, and sorrowing in their disappointments and failures. To some among them he was bound by the warmest ties of affection ; and I cannot here refrain from mentioning the love and esteem he had for Charles Sumner and George S. Hillard, whom he rather looked upon as his children than his pupils.

In a word, he loved his position ; and his never-failing vivacity ; his winning smile that played lambent as heat-lightning around his varying countenance ; his frank manner ; his contagious, joyous, and irresistible laugh ; and the fertility, unconsciousness and simplicity of his nature, endeared him to every one within the circle of his influence, and made him as delightful in the lecture-room as in his home.

When he first removed to Cambridge, and during the early years of his professorship, his lectures were given in the second story of a very old, low-studded wooden building, nearly opposite to Dane Hall, which had been long inhabited by the college students, and went by the name of First College House. In this building there were only two rooms appropriated to the Law School, one of which was occupied by my father, and contained his library ; the other being the lecture-room, to which

the students resorted for the purpose of study. At that time the number of works on the Law belonging to the University was very limited, and as nearly all of these were kept in the general Library and not in the Law School, the students were forced to avail themselves of my father's library whenever they had occasion to consult a legal work. This not only occasioned incessant interruptions, but my father also soon found that his books were defaced by this constant use, and sometimes lost. To forbid the students the use of his library was not in his nature, even had there been other means of carrying on their studies; but as it was, such a prohibition would have operated to cut them off from all means of consulting the necessary books, and this he was wholly unwilling to do. His library was very select and extensive. It had been collected with great care, and at a large expense, and was precisely adapted to his wants. To surrender it to the use of the students was exceedingly inconvenient and annoying. To sell it to the College involved the purchase of a new one for himself, which would be difficult, and in many cases, from the rarity of the books, impossible. His property did not justify him in presenting the library to the College, even had he felt no reluctance to part with it. After some consideration, he concluded, at the express desire of the Corporation, to sell it; but knowing the small resources of the school, and being yet in doubt as to its future success, he was unwilling to attach to his books their real value, and offered them at a sum so much below their worth, that it would not cover one half the cost of replacing them. The offer was gladly accepted. The books were transferred to the school and became

the basis of the large and complete law library now possessed by the College. My father always considered this as equivalent to a gift of at least one half the value of the library to the College; and I have been the more precise in stating the facts relating to this purchase, because they show his generosity of feeling towards the University, and make one of a series of benefits not known to the public.

The annual salary received by my father from the College at this time, and during all his Professorial Life, was one thousand dollars, from which four hundred dollars were deducted for the annual rent of the house, belonging to the University, which he occupied in Cambridge, leaving a net salary of six hundred dollars.

As the students began to increase in number, the smallness and inconvenience of the building in which the Law School was held, rendered some new arrangement necessary; and in 1830, the propriety of erecting a new building for the purpose was discussed. This, however, could only be done by appropriating a portion of the general funds of the University, the funds of the donations of Mr. Dane and Mr. Royall being inadequate to pay even the trivial salaries of the Professors, and the proceeds from tuition fees being wholly insufficient to enable the College to carry out such a design. But my father was opposed to making any important outlays upon the Law School, until its permanent success was satisfactorily established. In this view he wrote as follows:—

TO MR. PROFESSOR ASHMUN.

Washington, January 11th, 1831.

MY DEAR SIR:

In respect to a Law Building at Cambridge, I expressed to President Quincy, a few days before I left home, some doubt whether it was not a premature project. I would not have a dollar expended on our account, which would ultimately prove a loss. It would mortify me beyond measure. I would rather live in the old house, and work our way there through its dark lecture-rooms. It is perhaps yet uncertain how far our success may be permanent, and there is some danger, at least, that some of the profession, as well as other dignitaries, may not take a liberal interest in our success. At all events, it will be well to resist, rather than to invite expenses, until we find assurance doubly sure. As a temporary arrangement, I should not object to remain as we are, or to take a part of Massachusetts Hall, though I feel a good deal of repugnance to the latter course.

Believe me, most truly, your obliged friend,

JOSEPH STORY.

This project in respect to the new building was accordingly abandoned for the time.

Despite the labor, which had now accumulated upon my father, he found time to indulge in literary composition; and a plan having been arranged that the Professors belonging to the University should deliver a series of lectures before an audience composed of their families and friends, my father read an Introductory Lecture on the 23d of December, 1830. It was mainly directed to an exposition of the evils engendered by an exclusive devotion to any single study, and of the sympathetic and liberalizing influence which the various departments of

science, literature and speculation exert upon each other. It is marked by his usual ease and grace, and shows no indications of hurry or carelessness, although it was necessarily written rapidly and during the intervals of laborious engagements. It will be found in the collection of his Miscellaneous Writings.

At the close of this series, he gave a lecture on the Relation of Husband and Wife, in which the general principles of law and morals by which it is governed, were sketched with great felicity. Of this lecture, which was never written out, only the admirable syllabus from which he spoke, remains.

As the winter again came round, he was obliged to intermit his professorial for his judicial duties at Washington. Among the important cases which came before the Court during this term (1831) was that of the Cherokee Nation *v.* The State of Georgia, (5 Peters R. 1,) which is spoken of in the following letter :

TO MRS. JOSEPH STORY.

Washington, January 28th, 1831.

MY DEAR WIFE:

It is now, I believe, nearly a week since I wrote to you, and the Court having adjourned an half hour earlier than the usual time, I have determined to devote it to you. Nothing new has occurred in this city since I last wrote, except a proposition before Congress to repeal the twenty-fifth section of the Judiciary Act, a most important and alarming measure. If it should prevail, (of which I have *not* any expectation,) it would deprive the Supreme Court of the power to revise the decisions of the State Courts and State Legislatures, in all cases in which they were repugnant to the Constitution of the United States. So that all laws passed, and all decisions made, however destructive to the

National Government, would be utterly without redress. In short, the measure would enervate the whole power of the United States. I have said, that it will not probably succeed; indeed, the expectation is, that it will fall by a very large vote. But the introduction of it shows the spirit of the times. To-day, another measure of a similar character has been moved in the House, namely, to amend the Constitution in such a manner as that the Judges should hold their offices for seven years only. The House immediately rejected it, sixty-two for, and one hundred and fifteen votes against it.

You ask, in your last letter, that I would give you some intelligible account of the Georgia case; it is, in substance, this. The Cherokee Indians reside within the limits of the State of Georgia, and until recently, their territory and persons have been exempted from the operation of the Georgia Laws. So that they tried all cases, civil and criminal, in their own way, before their own tribunals. And they allege that their independence in their territory, possessions, and laws, has been guaranteed to them by the treaties of the United States. About six months ago the State of Georgia passed a law extending jurisdiction over the whole territory and tribe, appropriating their lands, and declaring them subject to trial in all cases, civil and criminal. One Tassels, a Cherokee, committed a murder in the Cherokee territory; he was arrested and tried before a Georgia Court, found guilty, and sentenced to be hanged. At the trial, he pleaded in his defence, that he was exempted from the jurisdiction of the Courts of Georgia, and could be tried only by his own nation, according to the treaties of the United States. His defence was rejected. He applied for a writ of error, to have the question reëxamined as a Treaty case, before the Supreme Court. The Chief Justice (Marshall) granted the writ, and issued a citation (that is a notice) to the State of Georgia, to appear and show cause, if they pleased, why there was no error in their proceedings. This is the whole case.

Tassels is hanged, and the writ of error is now gone, as he cannot be brought to life again. You will, from this statement, understand the case well enough to judge of the intemperate and indecorous proceedings of Georgia on the question.

Give my love to all, and believe me, as ever,

Affectionately yours,

JOSEPH STORY.

The execution of Tassels, however, although it quashed the writ of error in his case, did not conclude the general question between Georgia and the Cherokee nation. This came before the Supreme Court, upon a motion for an injunction to restrain the State of Georgia from enforcing her laws within the territory set apart to the Cherokee nation, by treaty with the United States; the Cherokees claiming to proceed in the Supreme Court of the United States as a foreign State against the State of Georgia, by virtue of the provision of the Constitution, giving to the Supreme Court jurisdiction in "controversies between a State or the citizens thereof, and foreign States, citizens, or subjects." It was held by the Court, that the Cherokees were not a foreign nation, within the meaning of the Constitution, but rather a domestic dependent nation; and, therefore, that the Supreme Court had no jurisdiction; and, also, that the claim set up was of a political nature, wholly unfit for the cognizance of a judicial tribunal, and that the injunction must be refused. On all these points, my father, in common with Mr. Justice Thompson, dissented.

This case was afterwards printed separately by the reporter of the Court, and dedicated to my father, who thus writes in acknowledgment:

TO RICHARD PETERS, ESQ.

Cambridge, June 24th, 1831.

MY DEAR SIR:

I have delayed answering your last letter, in the hope of acknowledging the receipt of the package, which contained the Cherokee case. It arrived this morning, and not before. I have not yet had time to do more than glance at it, and to read your warm and kind dedication of it to me. Nothing could be more interesting and acceptable to me, not because I feel that I have a just claim to such praise as you bestow on me, but because I know your sincerity, and feel the value of your friendship. My dear sir, I am not worthy of so much disinterested eulogy. But as far as God has given me powers, I will endeavor to deserve some small portion of it, and as a proof of your good will and affection, the tribute will be forever to me inestimable.

I shall distribute my copies immediately, and deposit one in Harvard College Library, that our names may there, at least, be associated together. The publication will do a great deal of good; the subject touches the moral sense of all New England. It comes home to the religious feelings of our people; it moves their sensibilities, and strikes to the very bottom of their sense of justice. Depend on it, there is a depth of degradation in our national conduct, which will irresistibly lead to better things. There will be, in God's Providence, a retribution for unholy deeds, first or last.

Lest I should lose the mail, I close this letter without being able to say more. I rejoice that Mr. Justice Thompson has done what I requested, that is, stated my concurrence with him. I am more and more satisfied we are right; and when I feel this, I am ready to meet all consequences. . . .

Most truly and affectionately,

Yours,

JOSEPH STORY.



The tone of the letters written by my father at this period is very despondent, and contrasts strongly with the enthusiastic expressions of his early political life. Under the Administration of General Jackson a new system of things had been introduced, and executive patronage and power gained that ascendancy which they have ever since maintained. Constitutional opinions were now put forward, which were, in my father's estimation, calculated to reduce the Government to a confederation. The views of the advocates of State rights, as expressed in the nullification doctrines of South Carolina,—the attack upon the twenty-fifth section of the Judiciary Act, by which appellate jurisdiction is given to the Supreme Court of the United States on constitutional questions,—and in the claims of Georgia over the Cherokee Nation,—which were all features of the time, tended, as he thought, directly to subvert the principles of the Government, and will account for the gloomy views as to the future, expressed in these letters.

TO MR. PROFESSOR ASHMUN.

Washington, January 30th, 1831.

MY DEAR SIR:

I had the pleasure of your letter of the twenty-third by yesterday's mail. My health continues good, and the Court are going on steadily in their business, turning neither to the right nor the left. In truth, there is nothing here worthy of drawing aside one's attention, unless it be to lament over the state of our public affairs, and that is by no means an agreeable topic. I have for a long time known that the present rulers and their friends were hostile to the judiciary, and have been expecting some more decisive demonstrations than had yet been given out. The recent attacks in Georgia, and

the recent nullification doctrine in South Carolina, are but parts of the same general scheme, the object of which is to elevate an exclusive State sovereignty upon the ruins of the general Government. The opinions upon this subject have been yearly gathering strength, and the non-resistance and passive obedience to them exhibited by the rest of the Union, have encouraged, and indeed nourished them. If, when first uttered, they had been met by a decided opposition from the Legislatures of other States, they would have been obsolete before now. But the indifference of some, the indolence of others, and the easy good-natured credulity of others, have given a strength to these doctrines, and familiarized them to the people so much, that it will not hereafter be easy to put them down. . . .

As to the Law School, though I am sorry to have lost some of our best students, I have never thought we could safely calculate upon more than thirty students at a time. I am ready to do what I can to deserve as many, and I wish no better coadjutor for the law, or in the law, than now fills the chair. May God grant you, my dear sir, all the success you are entitled to.

I am most truly and affectionately yours,

JOSEPH STORY.

TO MR. PROFESSOR TICKNOR.

Washington, January 22d, 1831.

MY DEAR SIR:

I received your letter a day or two ago, after a long delay on the road, occasioned, as you would naturally suppose, by the extraordinary snow storm, or rather storms, with which we have been visited. For a week past in this city there has been very good sleighing, a circumstance almost unparalleled in its annals.

The affair of Georgia, so far as Tassels is concerned, has probably passed by with his death. But we are threatened

with the general question in another form. At this moment, it would have been desirable to have escaped it; but you know it is not for Judges to choose times and occasions. We must do our duty as we may.

There has been an effort to procure a repeal of the twenty-fifth section of the Judiciary Act. The majority of the Judiciary Committee have agreed to report in favor of the repeal. But there will be a counter report from the minority. And it is now whispered, that the demonstrations of public opinion are so strong, that the majority will conclude not to present their report. If the twenty-fifth section is repealed the Constitution is practically gone. It is an extraordinary state of things, when the Government of the country is laboring to tread down the power on which its very existence depends. You may depend that many of our wisest friends look with great gloom to the future. Pray read, on the subject of the twenty-fifth section, the opinion of the Supreme Court, in *Hunter v. Martin*, 1 Wheaton's Reports. It contains a full survey of the Judicial powers of the General Government, and Chief Justice Marshall concurred in every word of it.

Give my best regards to Mrs. Ticknor. I long to see you and her.

Good night, I am faithfully,

Yours,

JOSEPH STORY.

TO MR. PROFESSOR ASHMUN.

Washington, February 13th, 1831.

MY DEAR SIR:

. . . You may, and probably do think my views in respect to the Union, and the fate of the Constitution too gloomy. It may be so. . . . The great difficulty is to make the mass of the people see their true interests, there being so many political demagogues, and so many party presses, that are in league to deceive them. We have long

been accustomed to think the press the great security of our liberty, and the great source of knowledge. But it seems to be forgotten that the same instrument which can preserve, may be employed to destroy. I know not how it is, but somehow it is a fact that, upon political questions, men are blind, and deaf, and dumb, when you attempt to disabuse them of their prejudices and mistakes. . . .

I am astonished (if I ought to be astonished at any thing,) at the proposition to establish a separate Criminal Court; it is a reform, exactly in the character of many of our day, all for the worse. I hope the project will be defeated. . . .

Believe me, very truly and affectionately,

Yours,

JOSEPH STORY.

TO HON. STEPHEN WHITE.

Washington, February 25th, 1831.

DEAR BROTHER:

. . . I look with considerable interest at the doings of the Massachusetts Legislature. . . . My humble judgment is, that the course of Massachusetts, in always preaching moderation, and never expressing herself with the masculine force which belongs to her character, is one of the main causes of her little weight in the Union. She takes no resolute ground as if she were in earnest, when all around are active and decided in their course. There seems to me a great deal of mawkish sentimentality in preaching against meddling with the affairs of the national Government, when the Union is in danger; most of the States have for twenty years past assumed it as their right and prerogative. We weaken ourselves by such a policy, at home, and acquire no merit for it abroad.

Give my love to the children, and believe me,

Most affectionately, yours,

JOSEPH STORY.

TO MR. PROFESSOR ASHMUN.

Washington, March 10th, 1831.

MY DEAR SIR :

We are drawing near the close of the term, and shall probably adjourn by the eighteenth, when I shall set my face eastward with all imaginable speed, intending no delay on the road. We have been sadly obstructed of late in our business, by very long and tedious arguments, as distressing to hear as to be nailed down to an old-fashioned homily. We are now upon the Charlestown Bridge Case, and have heard the opening counsel on each side, in three days. Dutton, for the plaintiffs, made a capital argument in point of matter and manner, lawyer-like, close, searching, and exact; Jones on the other side, was ingenious, metaphysical, and occasionally strong and striking. Wirt goes on to-day, and Webster will follow to-morrow. Six Judges only are present, which I regret; Duvall having been called suddenly away by the illness of his wife.

You will see, in the National Intelligencer, an article addressed to the people of the United States, on the late controversy between the President and Vice-President. It is able, and I doubt not comes from high sources. There is an answer to it in the Telegraph, coming (I conjecture) from the Vice-President, for it has his tone and manner. There is another article in the official paper (the Globe) in answer, which, I doubt not, is also from high authority. Read them all and consider. The Virginia Senators are dissatisfied with the course of the Administration, and it is rumored the State is itself somewhat at fault. But in political contests of this sort, strife is so mischievous to the common object, power, that the chances are always numerous in favor of a patched-up peace. Men separate strongly and widely on principles, but in personal attachments and private and

selfish objects, are easily reconciled, if they can be taught to see any present interest in so doing. . . .

I am very truly and affectionately,  
Your obliged friend,

JOSEPH STORY.

Towards the latter part of March my father returned from Washington, and again devoted himself to his duties in the Law School. In addition to his conversational exercises in the different text-books, moot-courts were now instituted, in which fictitious cases, involving disputed questions of law, were argued by the students before the professors, who sat as judges, and delivered their judgments. These were at first held once a week, but they were found to be at once so beneficial and so interesting to the students, that they at last came to be held two or three times weekly. The questions were founded upon a statement of facts drawn up by one or other of the Professors, and my father took great delight in inventing new cases, and in so varying those tried before him in the Supreme Court and on his Circuits, as by excluding the collateral questions, to adapt them to the bar of the School. On his return from Washington, he always brought home a number of them, which he had prepared during the session of the Court, and which, at the time of his death, amounted to several hundreds. The duty, or rather the pleasure of arguing these cases, (for it was esteemed a privilege and not a task,) was assigned by the Professors to each of the students in rotation, according to their standing, — those in the younger classes taking the part of junior counsel, and those in the more advanced studies acting as leaders.

Twice a year there were jury trials, the counsel in which were appointed by lot among the Law Students; twelve of the undergraduates acting as a jury. On these occasions, there was a sort of a festival at the School. The ordinary exercises were suspended; the Library, where the trial took place, was crowded with members of the University; and the contests between the parties were long, sharp, and earnest. In all these trials my father took great delight, and his interest stimulated the young men in their efforts. He delivered elaborate oral judgments, and they, in their turn, prepared their cases with great zeal. He used to say of their arguments, that they were often quite as good, and sometimes better, than those of the counsel engaged in the real cases. It would have seemed only natural, that, under the pressure and excitement of his judicial duties, these fictitious questions, wanting the stimulus of actual litigation, and unaffected by the passions and interests of real parties, would have seemed to him stale and flat. But it was not so. He entered into them with the same zest and gusto as if they had been real, — nay, even with more unfeigned satisfaction. He loved to see the young, ardent minds of the students, first measuring their strength in argument. There was all the interest, with none of the responsibility of his judicial life.

The benefit which the students derived from these “moot-court” trials was very apparent, and their progress in all their studies greatly encouraged and gratified my father. He entered into his professorial duties with his whole heart, and all other subjects became secondary in interest to the Law School.

His life was thus gliding on smoothly and busily

when his home was stricken by another domestic calamity. Louisa, the youngest of his children, — most lovely and attractive in person and mind, and who had been the pride and joy of my father's heart, as he watched her rapidly-developing graces and powers, was taken ill of a scarlet fever, and, after a very short illness, died on May 10th, 1831. This blow, which was wholly unanticipated, desolated our home, and entirely prostrated him. With great determination, however, he immediately betook himself to earnest labor, striving thus to attain to forgetfulness of his great loss. But it was very long before the world again looked glad to him, and to his death, this sorrow he carried like an arrow in his heart. The following letters show the condition of mind in which this bereavement left him.

TO REV. JOHN BRAZER.

Cambridge, May 25th, 1831.

MY DEAR SIR:

I have just received your kind letter, and reply gratefully to it at this moment, not knowing when I shall find more leisure. You did exactly as I should have done under like circumstances, and from the same considerations. When we are overwhelmed by a recent sorrow, we are incapable of consolation, and even of communion with other minds. We must be left to our own thoughts, and to the solitude of our own sorrow, until the heart has exhausted itself of its anguish and despair.

I have been very, very wretched. The calamity came upon us so suddenly and so awfully that it quite stunned me, and for a while I was sunk in utter desolation and despair. I have now become tranquil and collected. My official duties have compelled me to enter upon the business of common life, and this for a part of every day, has diverted my



thoughts from my immediate griefs. When, however, I am alone, I involuntarily relapse into a settled and miserable gloom.

My dear little daughter was one of the best, purest, and most affectionate of human beings. She was as perfect as any thing (at least to my eyes) on earth could be. The Providence, which has removed her from us, is to me truly mysterious; but having a firm and unfaltering belief in the goodness of God, and in his parental wisdom, I cannot doubt that it is for the best, though I am incapable of perceiving how it is so. Indeed, my dear sir, life would be to me a burden, a grievous burden, if it were not for the belief in another and a better state of existence. The hope of a glorious immortality, and of a re-union with those from whom we have parted here, seems to me the only real source of consolation; and I trust that after the anguish of my affliction shall have been diminished, by time and distance, I shall be able to realize the full force of it. At present, I am unable to do more than to bring the truth to my mind, without the power of giving to it the mastery over my feelings. . . .

And now I beg to thank you again and again for your sympathy. Mrs. Story and myself have had occasion several times to say that we were sure of your kind remembrance, and that of Mrs. Brazer in our affliction. God grant that your little family may be preserved to you, and that, as parents, such a bitter cup may pass by you without being tasted. Mrs. Story sends her love to Mrs. Brazer, and I cordially join in it, being her and

Your affectionate, though afflicted friend,

JOSEPH STORY.

TO HON. CHANCELLOR KENT.

Cambridge, June 24th, 1831.

MY DEAR SIR:

The last evening's mail brought me your kind and consolatory letter, and it was indeed very soothing to me. I thank

you again and again for it. I have indeed been made very wretched by this to me irreparable loss. My little daughter was one of the most beautiful and attractive of human beings, and at ten years of age, every thing her parents could wish. She was in our eyes absolutely perfect, and we lost her so suddenly, that we were at first stunned and overwhelmed with the blow. At present, Mrs. Story and myself are quite calm and tranquillized, as wretched as we well can be, and as well disposed as we can be, if we knew how, to see a consolation and a healing balm in any direction. I have been driven, by the pressure of my official duties, to escape from my own sorrows, and for some hours every day have been required to think for others, and not for myself; and this occupation, though painful, has, I doubt not, been useful to me.

The mysteries of God's Providence are to me inscrutable. But I have the firmest belief in His parental character, and that all he does is in mercy as well as in wisdom. The immortality of the soul, — the Christian doctrine of a life to come, which shall adjust all the irregularities here, seems to me the only rational ground of comfort and consolation. Without this hope and this belief, life would be a burden.

My sorrows have lately led me (as we are naturally led on such occasions) to look at the sources of consolation to which the wisest and best of the heathens were accustomed to resort, to solace their own griefs. I was especially attracted to Cicero, to the topics by which his friends endeavored to assuage his griefs, and he theirs. I was surprised to see how few and desolate, and unsatisfactory were all their grounds of consolation, and I could not but feel that death then must have been, even in its mildest forms, most afflictive and terrific. In the Treatise of Cicero, to which you refer, we see more of our own private thoughts and reasonings, and we cannot but admire his anxious eloquence in support of the immortality of the soul. But it is most manifest, that it was, at best, a cold and lifeless and hesitating confidence, with which he pressed his arguments. If Christianity had done no more for man-

kind than to make known to us the immortality of the soul and the parental character of God, it seems to me that it would be the first of blessings. . . .

Most truly and affectionately,

Yours,

JOSEPH STORY.

This is the true spirit of Christian resignation. None but a truly religious nature could meekly bend to affliction with such trust and faith, looking forward to a reunion in another state of existence, with her whom he had lost; and not forgetting, in his grief for the dead, his daily duties, and the claims of the living upon his activity and cheerfulness.

The following beautiful lines, written by my father, are those alluded to in the last letter :

FAREWELL, my darling child, a sad farewell !  
 Thou'rt gone from earth, in heavenly scenes to dwell ;  
 For sure, if ever being formed from dust  
 Might hope for bliss, thine is that holy trust.  
 Spotless and pure, from God thy spirit came ;  
 Spotless it has returned, a brighter flame.  
 Thy last, soft prayer was heard — No more to roam ;  
 Thou art, ('t was all thy wish) thou art gone home.\*  
 Ours are the loss, and agonizing grief,  
 The slow, dead hours, the sighs without relief,  
 The lingering nights, the thoughts of pleasure past,  
 Memory, that wounds, and darkens to the last.  
 How desolate the space, how deep the line,  
 That part our hopes, our fates, our paths, from thine !  
 We tread, with faltering steps, the shadowy shore ;  
 Thou art at rest, where storms can vex no more.  
 When shall we meet again, and kiss away  
 The tears of joy, in one eternal day ?

\* The last words, uttered but a few moments before her death, were, "I want to go home."

Most lovely thou ! in beauty's rarest truth !  
A cherub's face, the breathing blush of youth ;  
A smile more sweet than seemed to mortal given ;  
An eye that spoke, and beamed the light of heaven ;  
A temper like the balmy summer sky,  
That soothes, and warms, and cheers, when life beats high ;  
A bounding spirit, which, in sportive chase,  
Gave, as it moved, a fresh and varying grace ;  
A voice whose music warbled notes of mirth,  
Its tones unearthly, or scarce formed for earth ;  
A mind, which kindled with each passing thought,  
And gathered treasures, when they least were sought ; —  
These were thy bright attractions ; these had power  
To spread a nameless charm o'er every hour.  
But that, which, more than all, could bliss impart,  
Was thy warm love, thy tender, buoyant heart,  
Thy ceaseless flow of feeling, like the rill,  
That fills its sunny banks, and deepens still ;  
Thy chief delight to fix thy parents' gaze,  
Win their fond kiss, or gain their modest praise.

When sickness came, though short, and hurried o'er,  
It made thee more an angel than before.  
How patient, tender, gentle, though disease  
Preyed on thy life ! — how anxious still to please !  
How oft around thy mother's neck entwined,  
Thy arms were folded, as to Heaven resigned !  
How oft thy kisses on her pallid cheek  
Spoke all thy love, as language ne'er could speak !  
E'en the last whisper of thy parting breath  
Asked, and received, a mother's kiss, in death.

But oh ! how vain by art, or words, to tell,  
What ne'er was told, — affection's magic spell !  
More vain to tell that sorrow of the soul,  
That works in secret, works beyond control,  
When death strikes down, with sudden crush and power,  
Parental hope, and blasts its opening flower.  
Most vain to tell, how deep that long despair,  
Which time ne'er heals, which time can scarce impair.

Yet still I love to linger on the strain —  
'T is grief's sad privilege. While we complain,  
Our hearts are eased of burdens hard to bear ;  
We mourn our loss and feel a comfort there.

My child, my darling child, how oft with thee  
 Have I passed hours of blameless ecstasy !  
 How oft have wandered, oft have paused to hear  
 Thy playful thoughts fall sweetly on my ear !  
 How oft have caught a hint beyond thy age,  
 Fit to instruct the wise, or charm the sage !  
 How oft, with pure delight, have turned to see  
 Thy beauty felt by all, except by thee ;  
 Thy modest kindness, and thy searching glance ;  
 Thy eager movements, and thy graceful dance ;  
 And, while I gazed with all a father's pride,  
 Concealed a joy, worth all on earth beside !

How changed the scene ! In every favorite walk  
 I miss thy flying steps, thy artless talk ;  
 Where'er I turn, I feel thee ever near ;  
 Some frail memorial comes, some image dear.  
 Each spot still breathes of thee — each garden flower  
 Tells of the past, in sunshine, or in shower ;  
 And here the chair, and there the sofa stands,  
 Pressed by thy form, or polished by thy hands.  
 My home, how full of thee ! — But where art thou ?  
 Gone, like the sunbeam from the mountain's brow ;  
 But, unlike that, once passed the fated bourn,  
 Bright beam of heaven, thou never shalt return.  
 Yet, yet, it soothes my heart on thee to dwell ;  
 LOUISA, darling child, farewell, farewell !

The following prayer, written while under the immediate influence of this affliction, I find in his Common-place-Book : —

A PRAYER WRITTEN IN MAY, 1831.

O ! Almighty God, our merciful Father, who dost not afflict the children of men but for wise ends, we humbly entreat Thee to look down with thy favor upon us thy afflicted servants, bowed down with sorrow for the loss of a dearly beloved child. Pour comfort into our hearts ; teach us the ways of consolation ; enable us to be resigned to thy will, and to feel in this sad event the workings of thy

mysterious, but beneficent Providence. O! heal the wounds which, by thy will, now make our souls to bleed. Give us to know more of Thee and of ourselves. Let us receive light from thy blessed influences on our broken spirits. Show us the paths of true religion and peace, and direct our steps therein. Thou knowest our misery and despair; Thou alone canst succor and support us. May we learn that even in this calamity, Thou hast in store blessings for us. O, preserve, protect, and keep in Thy holy care, the two remaining children who are left to us. May they grow up and become blessings to their parents, and their friends, and their country, and serve Thee with true and devout hearts.

Thou art teaching us what shadows we are, and what shadows we pursue. O, may we improve this afflicting event, by more humility and devout affection, more ardent piety, and more love to mankind, and grant us that spirit of gratitude, which shall lead us to Thee, the source of all wisdom and power and goodness, and to adore and bless Thy holy name ever more. Amen.

It was at this period, also, that my father made a translation of the beautiful epitaph on Miss Dolman, written by Shenstone. The epitaph and translation are as follows:—

Ah! Maria,  
Puellarum elegantissima,  
Ah! flora venustatis abrepta!  
Heu, quanto minus  
Cum reliquis versari,  
Quam tui meminisse.

TRANSLATION.

Maria, ah! most lovely! snatched away  
E'en in the flower of beauty's rare display,  
To dwell with Thee, in thought, how much more dear,  
Than to hold converse with the living here.

Earnestly my father now pursued his labors, to bury in them his sorrows. And besides his judicial and professorial duties, he interested himself in the formation and establishment of the Cemetery at Mount Auburn, taking a prominent part in this scheme. Towards the autumn of the year 1831, all the arrangements having been made, the consecration of this beautiful spot, as a resting-place for the dead, took place on September 24th, and my father delivered an address on the occasion.

In the thoughts incident to such a duty, there was much to move his sensibilities, and much also to solace his wounded heart. In writing his address, he found a refuge from busy cares, and an outlet for crowding recollections, which found in utterance their best relief.

The time appointed for the consecration, was one of the serenest of those melancholy days, which mark the early New England autumn. The preceding day had been rainy, but the clouds had now disappeared, and a dewy freshness filled the clear atmosphere. As the gathering crowds assembled, they wound now through the opening aisles of sombre evergreens, carpeted by the brown soft needles of the pines, and overarched by a green roof, whose foliage, almost impenetrable to the sun, admitted a dim, religious light, — and now through open passages, bordered by the flaming crimsons of the sumac, the dazzling yellow of shivering birches and sycamores, and the dark purple-red of the oak. The songs of thousands of birds made the woods vocal, and the lifting breeze sighed through the mourning pines, and shook the brilliantly painted leaves in the sunshine.

The spot where the address was delivered was a deep

dell in the cemetery, hollowed out like a bowl, and surrounded by an amphitheatre of hills. In the centre was a small pond, over one part of which a staging for the speaker was erected, fashioned of unshorn pine boughs and young trees, and decorated with festoons of flowers interwoven with the variegated leaves of the forest, while the sides of the amphitheatre were covered with rude benches arranged among the trees for the audience.

The crowd at last assembled, and the dell was lined with life. The services commenced with a prayer, and as the clergyman arose, there was a rustle among the rising audience like a shiver of wind through the trees, and then a complete silence. Then was heard his voice invoking the blessing of God. The scene was novel and impressive beyond description, and the whole assembly seemed subdued to reverential feeling by this simple service in the great church of nature. As soon as he had finished, a band, stationed under a little clump of trees, played the reverend psalm of "Old Hundred" as a symphony, after which a few voices began to sing a hymn written for the occasion. Instantly the circle of singers widened among the audience, until the whole host lifted up their voices together in one vast choral, that swelled into the sky and sounded down the aisles of the wood with a grandeur of effect beyond that of dome or cathedral. There were at least six thousand persons in the dell, almost every one of whom, inspired by the occasion, joined in the singing, and such was the vastness of the mass of sound, that all the little detail of discord was lost in the ascending volume of harmony. An electric thrill seemed to pervade the air when the last sound of voices died away, which touched every heart.



My father then rose to speak, but so overpowered was he by his emotion that he could not begin. In a few moments, however, recovering his self-possession, he faltered out these first words of his address: "My friends, the occasion which brings us together has much in it calculated to awaken our sensibilities and cast a solemnity over our thoughts. We are met to consecrate these grounds exclusively to the service and repose of the dead." Several times, during the delivery of his discourse, he was so much overcome as to be obliged to pause, and his own emotion communicated itself to the audience, who listened in reverential silence and with glistening eyes. Such passages as this were written in his heart's blood, and could not fail to reach the hearts of all who had suffered like himself:—

"It is in vain, that philosophy has informed us, that the whole earth is but a point in the eyes of its Creator,—nay, of his own creation; that, wherever we are,—abroad, or at home,—on the restless ocean, or the solid land,—we are still under the protection of his providence, and safe, as it were, in the hollow of his hand. It is in vain, that Religion has instructed us, that we are but dust, and to dust we shall return; that, whether our remains are scattered to the corners of the earth, or gathered in sacred urns, there is a sure and certain hope of a resurrection of the body and a life everlasting. These truths, sublime and glorious as they are, leave untouched the feelings, of which I have spoken, or rather, they impart to them a more enduring reality. Dust as we are, the frail tenements, which enclose our spirits but for a season, are dear, are inexpressibly dear to us. We derive solace, nay, pleasure, from the reflection, that, when the hour of separation comes, these earthly remains will still retain the tender regard of those whom we leave behind; that the spot

where they shall lie will be remembered with a fond and soothing reverence; that our children will visit it in the midst of their sorrows; and our kindred, in remote generations, feel that a local inspiration hovers round it.

“Let him speak, who has been on a pilgrimage of health to a foreign land. Let him speak, who has watched at the couch of a dying friend, far from his chosen home. Let him speak, who has committed to the bosom of the deep, with a sudden, startling plunge, the narrow shroud of some relative or companion. Let such speak; and they will tell you, that there is nothing, which wrings the heart of the dying, — ay, and of the surviving, — with sharper agony, than the thought that they are to sleep their last sleep in the land of strangers, or in the unseen depths of the ocean.

“‘Bury me not, I pray thee,’ said the patriarch Jacob, ‘bury me not in Egypt; but I will lie with my fathers. And thou shalt carry me out of Egypt; and bury me in their burying-place.’ ‘There they buried Abraham, and Sarah his wife; there they buried Isaac, and Rebecca his wife; and there I buried Leah.’

“Such are the natural expressions of human feeling, as they fall from the lips of the dying. Such are the reminiscences, that for ever crowd on the confines of the passes to the grave. We seek again to have our home there with our friends, and to be blest by a communion with them. It is a matter of instinct, not of reasoning. It is a spiritual impulse, which supersedes belief, and disdains question.

“But it is not chiefly in regard to the feelings belonging to our own mortality, however sacred and natural, that we should contemplate the establishment of repositories of this sort. There are higher moral purposes, and more affecting considerations, which belong to the subject. We should accustom ourselves to view them rather as means than as ends; rather as influences to govern human conduct, and to moderate human suffering, than as cares incident to a selfish foresight.

“It is to the living mourner—to the parent, weeping over his dear dead child—to the husband, dwelling in his own solitary desolation—to the widow, whose heart is broken by untimely sorrow—to the friend, who misses, at every turn, the presence of some kindred spirit—it is to these, that the repositories of the dead bring home thoughts full of admonition, of instruction, and slowly, but surely, of consolation also. They admonish us, by their very silence, of our own frail and transitory being. They instruct us in the true value of life, and in its noble purposes, its duties, and its destination. They spread around us, in the reminiscences of the past, sources of pleasing, though melancholy reflection.

“We dwell with pious fondness on the characters and virtues of the departed; and, as time interposes its growing distances between us and them, we gather up, with more solicitude, the broken fragments of memory, and weave, as it were, into our very hearts, the threads of their history. As we sit down by their graves, we seem to hear the tones of their affection whispering in our ears. We listen to the voice of their wisdom, speaking in the depths of our souls. We shed our tears; but they are no longer the burning tears of agony. They relieve our drooping spirits, and come no longer over us with a deathly faintness. We return to the world, and we feel ourselves purer, and better, and wiser, for this communion with the dead.”

The following picturesque description gives an admirable notion of this beautiful “Field of Peace.”

“A rural cemetery seems to combine in itself all the advantages, which can be proposed, to gratify human feelings, or tranquillize human fears; to secure the best religious influences, and to cherish all those associations which cast a cheerful light over the darkness of the grave.

“And what spot can be more appropriate than this, for such a purpose? Nature seems to point it out, with signifi-

cant energy, as the favorite retirement for the dead. There are around us all the varied features of her beauty and grandeur; the forest-crowned height; the abrupt acclivity; the sheltered valley; the deep glen; the grassy glade, and the silent grove. Here are the lofty oak, the beech that 'wreaths its old, fantastic roots so high,' the rustling pine, and the drooping willow, the tree that sheds its pale leaves with every autumn, a fit emblem of our own transitory bloom, and the evergreen, with its perennial shoots, instructing us, that 'the wintry blast of death kills not the buds of virtue.' Here is the thick shrubbery, to protect and conceal the new-made grave; and there is the wild flower creeping along the narrow path, and planting its seeds in the upturned earth. All around us there breathes a solemn calm, as if we were in the bosom of a wilderness, broken only by the breeze, as it murmurs through the tops of the forest, or by the notes of the warbler, pouring forth his matin or his evening song.

"Ascend but a few steps, and what a change of scenery to surprise and delight us! We seem, as it were, in an instant, to pass from the confines of death to the bright and balmy regions of life. Below us flows the winding Charles, with its rippling current, like the stream of time hastening to the ocean of eternity. In the distance, the city—at once the object of our admiration and our love—rears its proud eminences, its glittering spires, its lofty towers, its graceful mansions, its curling smoke, its crowded haunts of business and pleasure, which speak to the eye, and yet leave a noiseless loneliness on the ear. Again we turn, and the walls of our venerable University rise before us, with many a recollection of happy days passed there in the interchange of study and friendship, and many a grateful thought of the affluence of its learning, which has adorned and nourished the literature of our country. Again we turn, and the cultivated farm, the neat cottage, the village church, the sparkling lake, the rich valley, and the distant hills, are before us, through opening vistas, and we breathe amidst the fresh and varied labors of man.

“There is, therefore, within our reach, every variety of natural and artificial scenery, which is fitted to awaken emotions of the highest and most affecting character. We stand, as it were, upon the borders of two worlds, and, as the mood of our minds may be, we may gather lessons of profound wisdom by contrasting the one with the other, or indulge in the dreams of hope and ambition, or solace our hearts by melancholy meditations.”

In this Cemetery my father always took the greatest interest up to the day of his death, and was for some time President of the Corporation. Here he built him a monument, on the one side of which he caused to be inscribed: “Sorrow not as those without hope;” on the other, “Of such is the kingdom of heaven.” Under the turf here sleep all that was mortal of eight children. Here, frequently during the summer months, he came to walk through its silent glades. And here, where in his college days he had dreamed of the future, his earthly body now sleeps its last sleep.

## CHAPTER II.

### JUDICIAL LIFE.

SCHEME OF TREATISES ON JURISPRUDENCE—ILLNESS OF CHIEF JUSTICE MARSHALL—EXCLUSIVENESS OF THE ENGLISH BAR IN RESPECT TO AMERICAN JURISPRUDENCE—DEATH OF CHIEF JUSTICE PARKER—MY FATHER REQUESTED TO TAKE THE OFFICE OF CHIEF JUSTICE OF MASSACHUSETTS—DECLINES IT—SKETCH OF CHIEF JUSTICE PARKER—HEALTH BREAKS DOWN—LINES ENTITLED, "SKETCHES OF CHARACTER"—COUPLETS WRITTEN IN MEMORANDUM-BOOKS OF ARGUMENTS—LETTERS WRITTEN FROM WASHINGTON—VERSES ENTITLED, "ADVICE TO A YOUNG LAWYER"—BUILDING OF THE NEW LAW COLLEGE—CHEROKEE MISSIONARY CASE—CHARLESTOWN BRIDGE CASE—PUBLICATION OF COMMENTARIES ON BAILMENTS—SKETCH OF IT—DEDICATION—BEGINS TO PRINT COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES—HIS SYSTEMATIC INDUSTRY—AMOUNT OF HIS LABORS—HIS PERSONAL HABITS—LETTER ON THE BILL FOR APPORTIONING REPRESENTATION—LETTERS—SKETCH OF HIS LIFE AND SERVICES, BY MR. EVERETT—PROCLAMATION OF GENERAL JACKSON AGAINST THE NULLIFICATION DOCTRINES OF SOUTH CAROLINA.

MR. DANE, in the communication to the Corporation of Harvard University, accompanying his donation, proposed that the Professor on his foundation should "prepare and deliver and revise for publication a course of Lectures on the five following branches of Law and Equity, equally in force in all parts of our Federal Republic, namely,—The Law of Nature, The Law of Nations, Commercial and Maritime Law, Federal Law, and Federal Equity, in such wide extent as the same branches now are, and from time to time shall be admi-

nistered in the Courts of the United States, but in such compressed form as the Professor shall deem proper." As the method of teaching adopted in the school was by familiar and conversational expositions, and not by written lectures, a variation of Mr. Dane's plan became necessary. My father, therefore, determined, in place of reducing his lectures to writing, to prepare a series of systematic treatises on the subjects set forth by Mr. Dane, to serve as text-books for the students. This scheme involved, of course, a labor greatly additional to that which was originally contemplated, but so fully was he persuaded of its greater benefit, that he did not hesitate to adopt it. The course of lectures to be delivered by the Professor was, according to Mr. Dane's plan, to consist of "four or more octavo volumes" in all. My father, however, greatly extended this plan, and projected the writing of a series of works in each of the prescribed departments, beginning with Commercial Law, then taking up successively Federal Law and Equity, and closing with the Law of Nature and Nations. The first volume of his series in the Commercial Law, he proposed to devote to Commentaries on the Law of Bailments; and no sooner had he become fairly established in his chair than he gave himself to the writing of this work, bestowing upon it all the time he could command, in the intervals of his other professorial and judicial labors.

This treatise was finished in the year 1831, and before it was put to press, he had entered upon another branch, that of Federal Law, and had begun to write his Commentaries on the Constitution of the United States.

While he was thus engaged in these labors, he received intelligence of the dangerous illness of Chief Justice Marshall. The warmth of his feelings towards the Chief Justice thus breaks out on learning that he was recovering.

TO RICHARD PETERS, ESQ.

Cambridge, October 29, 1831

MY DEAR SIR:

I am greatly obliged to you for all your late letters, and in particular for the cheering intelligence that our good and great Chief Justice is beyond all danger. This seems to me a special interposition of Providence in favor of the Constitution, and my heart is abundantly rejoiced, and I offer up to God my sincere gratitude for such an inestimable favor. May his life be preserved many years.

I have been confined to my house with a very severe cold for nearly a whole week, and am not yet able to go abroad. The whole Circuit Court business in Boston, (which, however, is not great,) stands suspended until my recovery. I see enough, however, to satisfy myself that I shall not be able to make any visit to Philadelphia until after the Rhode Island Circuit Court, which commences on the 15th of November. Whether I shall then be able to effect it, is more than at present I can say, but I do not despair. And it would be such a delight to me to see your family, and to cheer our admirable friend, that I shall struggle hard to accomplish it, if I can steal the necessary time.

Pray tell the Chief Justice how deeply every one here has been interested in his situation. He is beloved and revered here beyond all measure, though not beyond his merits. Next to Washington he stands the idol of all good men. And who so well deserves it? I look upon his judicial life as good now for at least six years longer.



My book on Bailments is in the press, and as soon as published, which will be about January, you shall have a copy.

I write you in infinite haste, but never in too great, to say that I am,

Most truly and affectionately, your friend,

JOSEPH STORY.

Among the letters written by my father during this year, is the following one, in acknowledgment of a letter from J. J. Wilkinson, Esq., (of the Temple, London,) accompanied by a copy of his Treatise on Replevin. It contains an expression of opinion upon the exclusiveness of the English Bar and Bench, in ignoring the jurisprudence of America, as expressed in her Reports and Treatises.

TO JAMES J. WILKINSON, ESQ.

Cambridge, July 15th, 1831.

SIR :

I take very great pleasure in acknowledging the receipt of your letter of the 25th of March last, and of the accompanying copy of your work on Replevin, and the Statute of Limitations. These were most acceptable presents, and in common with the profession here, I beg to return my thanks for the ability and accuracy with which you have treated each of these subjects. Your works are well known among us, and are estimated as they ought to be.

Hitherto the jurisprudence of America has attracted very little notice in England, and seems, indeed, to have been passed by with utter neglect, as belonging only to a colonial or foreign law. There is, however, at this very moment, in the States of America, composing our Union, a population of about thirteen millions, all of which claims the Common Law as its birthright, and all of which is accustomed to study the Treatises and Reports of English Jurisprudence, as

the necessary preparation for practice in the Profession of the Law. \* In several of the States, Commercial Law may be said to form a principal business of the Courts, and to be examined with a diligence and ability equal to its vast importance. Not an English decision or treatise is published three months, before it finds its way to our libraries, and is there studied and criticized with profound attention. It is not, therefore, too much to say that every just effort is made here to administer the Common Law, especially the Commercial Law, with vigor, with sound judgment, and with elaborate learning. Whether the success be proportionate to the efforts, the profession here will be willing to trust to the public reports, in every circle to which they may find access. It has struck the profession in America as somewhat remarkable, that in commercial questions of acknowledged novelty and difficulty, English lawyers should diligently consult the Jurisprudence of some of the petty States of Continental Europe, without ever deeming that of their own descendants in America worth examination. It is so desirable from the connections of trade, that a similar system of Jurisprudence on commercial subjects should pervade both countries, that it would not be unnatural to presume that public policy might point out the occasional propriety of a reference to the acknowledged Jurisprudence of America, in cases where the English rule was still unsettled.

Your Treatise on Replevin I examined, in the hope of finding a large discussion of the question, whether it lies in any case except where there has been a taking, and a tortious taking of the goods replevied. With you, a discussion of that point is not of much practical importance, as replevin is not ordinarily used as a process to try the title to property. With us, it is a very common process, almost as common as trover; and it is often abused, so as to cover, (as it once did in Ireland,) cases of bailments and rightful possession, but wrongful detainer.

It may not be without some interest to you to know that

though in the American States generally, the English Ejectment is the common mode of trying the title to real estate; yet that in the State of Massachusetts, and in some others of the New England States, the writs of entry, formedon and right, are the common processes by which all titles to real estate are tried. We have stripped real actions of their complicated apparatus; but in their principles they subsist with us, in the same vigor with which they flourished in England, antecedently to the reign of Elizabeth.

Believe me, with the highest respect and consideration,  
Your most obliged and obedient servant,

JOSEPH STORY.

During this year, the Chief Justiceship of the Supreme Court of Massachusetts became vacant by the death of Chief Justice Parker, and my father was earnestly pressed to accept an appointment to this office. But he declined so to do. In a letter to Richard Peters, Esq., dated October 25th, 1831, he says, —

“I send you a copy of Mr. Palfrey’s sermon on the death of Chief Justice Parker, with my own notice of his character. I was strongly assailed from several quarters to resign my seat in the Supreme Court, and become Chief Justice, and I had no small difficulty in escaping from the attack. The appointment which has been made (of Lemuel Shaw, Esq.) is highly respectable, and the profession is generally satisfied.”

The notice, alluded to in the above extract, is as follows : —

“Mr. Chief Justice Parker brought with him to the Bench the reputation of an able, active, and learned advocate. He had well earned that reputation, by a course of long and honorable practice in the then District, now State of Maine.

His talents, high as they were, were not his only recommendation. He possessed, what talents may adorn, but what talents, however shining they may be, never can supply, the *Mens conscia recti*, an inflexible integrity, a deep-rooted and enlightened virtue. His private life was without reproach, his honor without stain, his political and civil career straightforward and steady. His manners were frank, modest, and winning, without ostentation and without affectation. Nature had given him a mild temperament, a quiet and moderated cheerfulness, an ingenuous countenance, and social kindness, which pleased without effort, and was itself easily pleased. But his most striking characteristic was sound sense, which, though no science, is, in the affairs of human life, fairly worth all others, and which had in him its usual accompaniments, discretion, patience, and judgment. In his professional harangues he was persuasive and interesting; he had the earnestness of one, who felt the importance of fidelity to his client, and, at the same time, the sincerity of one, who felt the dignity of truth, and of that jurisprudence, whose servant he was, and whose precepts he was not at liberty to disown, and was incapable of betraying. In the sense sometimes affixed to the term, he did not possess eloquence; that is, he did not possess that vivid imagination, which delights in poetical imagery, or in rhetorical flourishes, in painting the passions, or in exciting them into action. He was not addicted to a rich and gorgeous diction, or to coloring his thoughts with the lights and shades, or the brilliant contrasts, of a variegated style. But in a just sense, if we look to the means or the end, to his power of commanding attention, or his power of persuading and convincing the understanding, he might be deemed truly eloquent. His reasonings were clear, forcible, and exact; his language, chaste, pointed, and select; his fluency of speech, uncommon; his action, animated; so that in their actual union they gave a charm to his arguments, which won upon the ears and captivated the judgment of his audience.

“ Such was the reputation and character, which he brought to the Bench. He took his seat among distinguished men ; and he sustained himself as a worthy and equal associate. He did more, and accomplished what few men do accomplish ; he moved on with a continual increase of reputation, even to the very hour of his death. He lived through times, happily now past, of peculiar delicacy and difficulty ; in the midst of great political changes and excitements, when the tribunals of justice were scarcely free from the approaches of the spirit of discord, and the appeals of party were almost ready to silence the precepts of the law. During this period, his firmness, moderation, patience, and candor secured to him the public confidence. When the office of Chief Justice became vacant by the lamented death of Mr. Chief Justice Sewall, all eyes were turned to him as the successor. His appointment gave universal satisfaction. And yet, if he had died at that period, half of his real merits would have remained unknown. His ambition was now roused to new exertions by the responsibility of the station ; his mind assumed a new vigor ; his industry quickened into superior watchfulness ; and he expanded, so to say, to the full reach of his official duties. It was a critical moment in the progress of our jurisprudence. We wanted a cautious, but liberal mind, to aid the new growth of principles, to enlarge the old rules, to infuse a vital equity into the system, as it was expanding before us. We wanted a mind to do, in some good degree, what Lord Mansfield had done in England, to breathe into our common law an energy, suited to the wants, the commercial interests, and the enterprise of the age. We wanted a mind, which, with sufficient knowledge of the old law, was yet not a slave to its forms ; which was bold enough to invigorate it with new principles, not from the desire of innovation, but the love of improvement. We wanted sobriety of judgment ; but, at the same time, a free spirit, which should move over the still depths of our law, and animate the whole mass. Such a man was Mr. Chief Justice Parker. And whoever, in this

age, or in any future age, shall critically examine the decisions of the Supreme Court, during the sixteen years, in which he presided over it, will readily acknowledge the truth of these remarks.

“There was in his mind an original, intrinsic equity, a clear perception of abstract right and justice, and of the best mode of adapting it to the exigencies of the case. He felt, as Lord Ellenborough before him had felt, that the rules, not of evidence merely, but of all substantial law, must widen with the wants of society; that they must have flexibility, as well as strength; that they must accomplish the ends of justice, and not bury it beneath the pressure of their own weight. There is in this respect much, very much, to admire, and (if it were possible, in our reverence for the dead,) to envy, in his judicial career. Few men have ever excelled him in the readiness of grasping a cause, of developing its merits, or of searching out its defects. He may have had less juridical learning than some men; but no man more thoroughly mastered all that was before him, or expounded with more felicity the reasons even of technical doctrines. He had an almost intuitive perception of the real principle, pervading a whole class of cases, and would thread it through all their mazes with marvellous ability. His written opinions are full of sagacity and juridical acuteness, at the same time that they possess a singular simplicity and ease. He rarely fails to convince, even when he questions what seems justified by authority. His judicial style is a fine model. It is equally remarkable for propriety of language, order of arrangement, neat and striking turns of expression, and a lucid current of reasoning, which flows on to the conclusion with a silent but almost irresistible force. In his more studied efforts, in some of those great causes, in which the whole powers of the human intellect are tasked and measured, he was always found equal to the occasion. There are not a few of his opinions, on some of these intricate subjects, which would bear a close rivalry with the best in Westminster Hall in our

own times. There are some, which any Judge might be proud to number among those destined to secure his own immortality.

“But we must stop; the time for mourning over such a loss cannot soon pass away. We have lost a great magistrate, and an excellent citizen. Vain is the voice of sorrow, and vainer still the voice of eulogy. They cannot recall the past. His place cannot be easily supplied; for it is difficult to combine so many valuable qualities in a single character. To sum up his in one sentence, we may say, that as a Judge, he was eminent for sagacity, acuteness, wisdom, impartiality, and dignity; as a citizen, for public spirit and elevated consistency of conduct; as a man, for generosity, gentleness, and moral purity. His fame must rest, where it is fit it should, upon the printed reports of his own decisions. These will go down to future ages; and though, perhaps, beyond the circle of the profession, they may not attract much general observation, (for the misfortune of the profession is, that great Judges and great lawyers cannot enjoy a wide-spread popular favor,) they will yet be read and honored by the jurists of succeeding times with undiminished reverence, when those of us, who have known and loved him, shall be mingled with the dust, that now gathers round his remains. They will often recall to the classical reader the beautiful eulogy of Cicero, upon a great character of antiquity, so applicable to his: ‘*Erat in verborum splendore elegans, compositione aptus, facultate copiosus; eaque erat cum summo ingenio, tum exercitationibus maximis consecutus; rem complectebatur memoriter, dividebat acute, nec prætermittebat fere quidquam, quod esset in causâ, aut ad confirmandum aut ad refellendum.*’”

As might naturally be supposed my father's health broke down under these accumulations of labor and sorrow, which this year brought. He was taken ill in November, and for nearly a month was forced to forego

his usual occupations. His impatience at this confinement and necessary idleness is shown in the following letter. Activity was as necessary to his enjoyment as sunshine to the color of a flower; and the most irksome effect of sickness was that it deprived him of action.

TO PROFESSOR ASHMUN.

Cambridge, December 2d, 1831.

MY DEAR SIR:

I have had a tedious illness, and am now, as I trust, upon the strong side of recovery; I am feeble, however, and cannot get rid of a certain lassitude and weariness, which hang on my mind as well as body. By the favor of Dr. Shattuck, I hope in a day or two to be down stairs, unless we are all frozen up.

I feel great discontent and impatience in not being about my accustomed duties, especially in the Law School. I long for recitations, and moot-courts, and in short for disputation and action.

I regret that you have "the cold." Pray, in mercy to us all, do not get sick until I am better and can relieve you.

Yours, truly,

JOSEPH STORY.

From this illness my father sufficiently recovered to be able to go to Washington in the winter. The principal case, which came before the Supreme Court during this session, was *Worcester v. The State of Georgia*, (6 Peters's R. 515,) which, under a different form, involved nearly the same questions as the case of the *Cherokee Nation v. The State of Georgia*, decided in the previous term. In this case a missionary, who was preaching the Christian religion among the Cherokees,



was seized, tried, and imprisoned by virtue of an Act of the State of Georgia, prohibiting white people to reside within the limits of the Cherokee Nation without a permit from the Governor of Georgia, under penalty of imprisonment in the Penitentiary. Against the decision of the Superior Court of Georgia, under this Act, a writ of error was brought in the Supreme Court of the United States; and it was there held, that the power to regulate the intercourse between the Cherokees and the United States was, by the Constitution and the laws, vested solely in the Federal Government, and that the Act of Georgia, assuming jurisdiction over this subject, was unconstitutional and void. Some of the following letters allude to this case.

TO MRS. JOSEPH STORY.

Washington, January 13th, 1832.

MY DEAR WIFE:

. . . At Philadelphia I was introduced to two of the Chiefs of the Cherokee Nation, so sadly dealt with by the State of Georgia. They are both educated men, and conversed with singular force and propriety of language upon their own case, the law of which they perfectly understood and reasoned upon. I never in my whole life was more affected by the consideration that they and all their race are destined to destruction. And I feel, as an American, disgraced by our gross violation of the public faith towards them. I fear, and greatly fear, that in the course of Providence there will be dealt to us a heavy retributive justice. . . .

I am as ever, affectionately yours,

JOSEPH STORY.

TO PROFESSOR ASHMUN.

Washington, January 17th, 1832.

MY DEAR SIR:

. . . I arrived at this city on Wednesday last and had, on the whole, a very comfortable journey, having good roads and pleasant companions. Since my arrival here, I have seen few persons and have been principally confined to the mere dry business of the Court. On the all-absorbing subject of politics I can therefore say nothing.

Judge Johnson is still sick at Raleigh, having had several successive attacks of the autumnal bilious fever of the South, from which he has suffered very much. It is quite doubtful if he joins us this term. The other Judges appear in good health, and as the business of the docket does not look very formidable, I hope we shall go through a considerable portion of it without any of us being hauled up in ordinary.

Winter seems here to have almost departed; we have had a week of the most delightful weather, mild, still, and sunny; and we daily expect the Potomac to break up and open navigation. I hope that you are not still below zero in Cambridge. . . .

I am glad that the contract for the Law building is about being closed. We want the accommodation, and every hour's delay is mischievous. I do not care so much about the number of students, as about the positive extent and elevation of our instructions. I shall return in the spring with renewed zeal, and I hope with better health and spirits.

I am impatient for my book to get through the press, not as an author, but as a Professor. It is of importance for our school that it should get through during the winter, and before the Court breaks up. Tell this to Hilliard & Brown, and ask them to send me half a dozen copies to distribute, besides what they send on sale.

I shall write you again soon; that is, as soon as I can find

any thing to say which may not put you to sleep. There will be warm debates here in a short time; the forces are under discipline for the wars and the rescue.

Believe me very affectionately, yours,

JOSEPH STORY.

TO J. EVELYN DENNISON, M. P.

Washington, January 24th, 1832.

MY DEAR SIR :

I still continue to take a very lively interest in every thing which regards England. Indeed the very extraordinary circumstances in which she is now placed, give an increased interest to every political movement, in and out of Parliament. I have read the debates on the subject of reform in the House of Commons, with the most profound attention, and to an American, as well as to Englishmen, they furnish materials for deep meditation. They lay open, in a very striking manner, the difficulties of any changes in the actual structure of a Government, however salutary they may seem, and however urgently they may press on the public mind. At this distance, it is not easy for us to understand this subject well, and there seem so many anomalies in your representation, that perhaps it is not quite easy for you at home to weigh the operations of any perturbations of the present balance. The popular opinion in America is decidedly with Lord Gray's Administration, and as you may well suppose, the reformers have an unequivocal sympathy. For myself, I am free to say, that I partake in this respect of the common feelings of my countrymen; but with more subdued confidence, and with more hesitation. The debates in Parliament have led me to entertain considerable doubts how far you can safely go, and preserve the proper balances of the Government. But I am thoroughly persuaded that some reform you must have, effective and broad; and I am sure that it is im-

possible to remain in your actual position without infinite dangers. I would say, in the good old language of the Common Law, God send you a safe deliverance. . . .

Our public affairs are prosperous. We are rapidly paying off our public debts, and in two years they will probably be wholly extinguished. The past year has also been a very profitable one to all our interests, agricultural, commercial, and manufacturing, and especially to the latter. The only speck in our political horizon which looks dark, is caused by the vehement excitement in South Carolina on the subject of our tariff. But there is in reality little to be apprehended on this subject, although the language of her politicians is exceedingly rash and indefensible. There is a strong party in her own bosom to control her, and elsewhere there is a calm. The tariff may, and probably will be modified, so far as it may be necessary to adapt itself to our decreasing wants; but the protecting system will, I doubt not, be adhered to with a firm and unhesitating policy. At least three fourths of the States are in its favor. . . .

Believe me, with the highest respect,

Your true and obliged friend and servant,

JOSEPH STORY.

TO REV. JOHN BRAZER.

Washington, February 16th, 1832.

MY DEAR SIR :

There has been some fine speaking in the Senate on the subject of the tariff. Mr. Clay's second speech, I am told, was very striking, and full of the best expositions of the subject; eloquent, and argumentative, and convincing. There is no doubt that the protective policy will be adhered to, though I doubt not that the tariff will undergo many modifications not inconsistent with that object.

I perceive a proposition in our Legislature to destroy the third article on the public maintenance of religion in our con-

stitution. It seems to me that there is no end to rash experiments upon all subjects. Who would have thought that so vital an interest to piety, and morals, and independent freedom of opinion, would have been yielded up in the House of Representatives, with so little show of debate? I read a few days ago, in the Boston Courier, an article which I thought excellent, against the amendment. Pray read it; I think it came from Mr. Lowell. I know not what others think, but my opinion is, that we shall soon be called on to give up our school system; and thus, one after another, the pillars of public virtue will be removed; I hope, rather than believe, that I shall be deceived.

Give my kind regards to Mrs. Brazer; my own health is good. May God continue to bless you, is the wish of

Your affectionate friend,

JOSEPH STORY.

TO MR. PROFESSOR TICKNOR.

Washington, March 8th, 1832.

MY DEAR SIR:

We have just decided the Cherokee case, and reversed the decisions of the State Court of Georgia, and declared her laws unconstitutional. The decision produced a very strong sensation in both houses; Georgia is full of anger and violence. What she will do, it is difficult to say. Probably she will resist the execution of our judgment, and if she does, I do not believe the President will interfere, unless public opinion among the religious of the Eastern and Western and Middle States, should be brought to bear strong upon him. The rumor is, that he has told the Georgians he will do nothing. I, for one, feel quite easy on this subject, be the event what it may. The Court has done its duty. Let the nation now do theirs. If we have a Government, let its command be obeyed; if we have not, it is as well to know it at once, and to look to consequences.

My health has been growing better for six weeks past, and indeed for the last three weeks I have been as strong as I ever was.

Your affectionate friend,

JOSEPH STORY.

TO MRS. JOSEPH STORY.

Washington, February 26th, 1832.

MY DEAR WIFE:

The cessation of our weekly labors enables me again to command some leisure to write you; but indeed I find little to communicate, except that my health is good, and that I feel a daily increasing strength. I attribute this in some degree to my increase of exercise by walking to and from the Capitol, which gives me a fair daily journey of more than four miles. . . .

We have had from Mr. Wirt and Mr. Sergeant, in the past week, some fine arguments in the Cherokee case, brought before us in a new form. You may remember that Mr. Worcester and other missionaries among the Cherokees, have been sentenced to imprisonment in the State Penitentiary of Georgia, for the novel offence of remaining among the Cherokees without taking an oath of allegiance to Georgia. Their cases have been brought before us by a writ of error, upon the ground of their unconstitutional convictions. Both of the speeches were very able, and Mr. Wirt's, in particular, was uncommonly eloquent, forcible and finished. They were on the side of the missionaries, and no person appeared for the State of Georgia. I confess that I blush for my country, when I perceive that such legislation, destructive of all faith and honor towards the Indians, is suffered to pass with the silent approbation of the present Government of the United States.

When I have nothing else to do, in order to get rid of my own sad thoughts, I sometimes fly to poetry. I have written some lines since I have been here, which I intended to send

you in this letter. But the Chief Justice has requested me to give him a copy, and I shall retain the original until I can make one. . . .

Your affectionate husband,  
JOSEPH STORY.

The lines alluded to in this last letter, are as follows : —

#### SKETCHES OF CHARACTER.

Various the minds of men; more various still  
Their powers and passions, their pursuits and will.  
Some dull and prosing, yet themselves commend  
By their good nature, like an easy friend ;  
Some, proud and lofty, move with cumbrous state,  
Like knights in armor struggling with the weight.  
Some, bright and witty, scorch whate'er they touch,  
They always do too little or too much ;  
Some, sly and slippery, leave you still in doubt  
What is their meaning, and what worth, found out ;  
Some are so crabbed, that they ne'er go right,  
And some so odd, they pain like crossing light ;  
Some are so jealous of each word and look,  
They scan your features as they scan a book ;  
Some are so gentle, and so plastic too,  
They change like melting wax, and yet seem true ;  
Some are so vain, the very light they cast  
On their own foibles, marks them to the last ;  
Some are so grave, mysterious, and sedate,  
Their words flow coldly like decrees of Fate ;  
And some, so dark, so cunning, and so bold,  
The assassin's dagger lurks in every fold.  
How few of all we meet possess the power  
To smooth the rough, or cheer the listless hour ;  
With modest air to temper manly sense,  
Studious to please, and cautious of offence.  
How few with genius blest, combine the art  
To bear their honors meek, and win the heart.  
How few, of all who lead in public strife,  
Grace the calm scenes of pure sequester'd life ;  
How few with temper, and kind affections wide,  
Make home at once their solace and their pride.

How few of all, whom learning loves to raise,  
Forget their own, to aid another's praise.  
How few, the public favorites, learn to hear  
A rival's fame, without a frown or sneer.

Give me the man of frank and fearless mind,  
In knowledge various, and in taste refin'd,  
Deep in his feelings, in his words sincere,  
Tender of all, but to himself severe ;  
Melting at other's woes, but wisely sure  
Ne'er to touch wounds his kindness cannot cure ;  
Profound, when need requires, but lingering still  
On thoughts of gentler mood, and lighter skill ;  
Whose liberal converse with his theme grows bright,  
Cheerful, yet solid, earnest, yet polite ;  
Or in its playful turns, with silent sway  
Wins, as it varies, through the live-long day ;  
Who deems the first, the last of earthly gain,  
A home, where love, and peace, and virtue, reign ;  
His altar there, of life the aim and end ;  
Give me that man, and let me call him friend.

These lines are also mentioned in the following letter,  
with which they were sent to my mother: —

TO MRS. SARAH W. STORY.

Washington, March 4th, 1832.

MY DEAR WIFE:

Spring has at length opened upon us, and for several days past it has been as delightful weather as we could desire. I rejoice, also, that it brings me so near to the time of our adjournment, for I am weary of absence, and long to be at home. We shall adjourn about the sixteenth of the month, and I shall move towards Cambridge with all the rapidity with which steam and coaches can carry me. I hope to be at home by the twenty-second of March, and shall not, if the weather be good, be much behind it.

On going into the Chief Justice's room this morning, I found him in tears. He had just finished writing out for me some lines of General Burgoyne, of which he spoke to me last evening as eminently beautiful and affecting. I asked



him to change the purpose and address them to you, which he instantly did, and you will find them accompanying this. I saw at once that he had been shedding tears over the memory of his own wife, and he has said to me several times during the term, that the moment he relaxes from business he feels exceedingly depressed, and rarely goes through a night without weeping over his departed wife. She must have been a very extraordinary woman so to have attached him, and I think he is the most extraordinary man I ever saw, for the depth and tenderness of his feelings.

I send you also the lines which I wrote a few days since, they are such as a glance at things around me in this city naturally produced. A dull and sometimes a painful hour is thus passed away; and, to confess the truth, I am sometimes driven to such efforts to avoid being very wretched, when our melancholy losses come over me. . . .

Yesterday morning, the Chief Justice delivered the opinion of the Court in the Cherokee case, in favor of the missionaries. It was a very able opinion, in his best manner. Thanks be to God, the Court can wash their hands clean of the iniquity of oppressing the Indians, and disregarding their rights.

. . . . .

You need not write me after you receive this letter, as it is not probable I should receive any letter while here. Like the spring bird, I am weary of the winter, and am for flying to a more northern region, to meet the genial breezes there.

Give my love to the children, and I am as ever,

Affectionately yours,

JOSEPH STORY.

Devoted as my father was to the duties of his position, his early love of literature, and especially of poetry, was still strong in his breast, and in the few intervals of leisure he could command, he often indulged himself in giving to his thoughts and feelings a rhythmic form.

Among the verses written by him at this period are the following, which bear date 1831:—

ADVICE TO A YOUNG LAWYER.

Be brief, be pointed ; let your matter stand  
Lucid in order, solid, and at hand ;  
Spend not your words on trifles, but condense ;  
Strike with the mass of thought, not drops of sense ;  
Press to the close with vigor, once begun,  
And leave, (how hard the task !) leave off, when done.  
Who draws a labored length of reasoning out,  
Puts straws in line, for winds to whirl about ;  
Who drawls a tedious tale of learning o'er,  
Counts but the sands on ocean's boundless shore.  
Victory in law is gain'd, as battles fought,  
Not by the numbers, but the forces brought.  
What boots success in skirmish or in fray,  
If rout and ruin following close the day ?  
What worth a hundred posts maintained with skill,  
If these all held, the foe is victor still ?  
He, who would win his cause, with power must frame  
Points of support, and look with steady aim ;  
Attack the weak, defend the strong with art,  
Strike but few blows, but strike them to the heart ;  
All scatter'd fires, but end in smoke and noise,  
The scorn of men, the idle play of boys.  
Keep, then, this first great precept ever near,  
Short be your speech, your matter strong and clear,  
Earnest your manner, warm and rich your style,  
Severe in taste, yet full of grace the while ;  
So may you reach the loftiest heights of fame,  
And leave, when life is past, a deathless name.

His solicitude for the success of the youthful advocate, and his cordial counsels, again find similar utterance in a piece dated 1832, under the same title:—

Whene'er you speak, remember every cause  
Stands not on eloquence, but stands on laws.  
Pregnant in matter, in expression brief,  
Let every sentence stand in bold relief!

On trifling points, nor time, nor talents waste,  
 A sad offence to learning and to taste;  
 Nor deal with pompous phrase; nor e'er suppose  
 Poetic flights belong to reasoning prose.  
 Loose declamation may deceive the crowd,  
 And seem more striking as it grows more loud;  
 But sober sense rejects it with disdain,  
 As naught but empty noise, and weak as vain.  
 The froth of words, the school-boy's vain parade  
 Of books and cases, — all his stock in trade, —  
 The pert conceits, the cunning tricks and play  
 Of low attorneys, strung in long array, —  
 The unseemly jest, the petulant reply,  
 That chatters on, and cares not how, or why, —  
 Studious, avoid, — unworthy themes to scan,  
 They sink the Speaker and disgrace the Man,  
 Like the false lights, by flying shadows cast,  
 Scarce seen when present, and forgot when past.

Begin with dignity, expound with grace,  
 Each ground of reasoning in its time and place;  
 Let order reign throughout, each topic touch,  
 Nor urge its power too little or too much.  
 Give each strong thought its most attractive view,  
 In diction clear, and yet severely true.  
 And, as the arguments in splendor grow,  
 Let each reflect its light on all below.  
 When to the close arrived, make no delays,  
 By petty flourishes or verbal plays,  
 But sum the whole in one deep, solemn strain,  
 Like a strong current hastening to the main.

It was my father's habit, while sitting on the Bench, to versify any casual thought suggested to him by the arguments of counsel, and in his note books of points and citations, several pages are generally devoted to memoranda in prose and verse, of facts, and thoughts, which interested him. In his memorandum-book of arguments before the Supreme Court in 1831 and 1832, I select the following fragments written on the fly-leaf:—

You wish the Court to hear, and listen too?  
 Then speak with point, be brief, be close, be true.

Cite well your cases; let them be in point;  
 Not learned rubbish, dark, and out of joint; —  
 And be your reasoning clear, and closely made,  
 Free from false taste, and verbiage, and parade.

Stuff not your speech with every sort of law,  
 Give us the grain, and throw away the straw.

Books should be read; but if you can't digest,  
 The same's the surfeit, take the worst or best.

Clear heads, sound hearts, full minds, with point may speak,  
 All else how poor in fact, in law how weak.

Who's a great lawyer? He, who aims to say  
 The least his cause requires, not all he may.

Greatness ne'er grew from soils of spongy mould,  
 All on the surface dry; beneath all cold;  
 The generous plant from rich and deep must rise,  
 And gather vigor, as it seeks the skies.

Who'er in law desires to win his cause,  
 Must speak with point, not measure out "wise saws,"  
 Must make his learning apt, his reasoning clear,  
 Pregnant in matter, but in style severe;  
 But never drawl, nor spin the thread so fine,  
 That all becomes an evanescent line.

The following sketch was drawn at this time on the  
 Bench, and apparently from life: —

With just enough of learning to confuse, —  
 With just enough of temper to abuse, —  
 With just enough of genius, when confest,  
 To urge the worst of passions for the best, —  
 With just enough of all that wins in life,  
 To make us hate a nature formed for strife, —  
 With just enough of vanity and spite,  
 To turn to all that's wrong from all that's right, —  
 Who would not curse the hour when first he saw  
 Just such a man, called learned in the law.

The Charlestown Bridge case, alluded to in the next

letter, was not decided by the Court until the January term of 1837. It arose upon a question, whether the charter of the Warren Bridge, granted by the Legislature of Massachusetts, was unconstitutional, as "impairing the obligation of a contract," it operating to destroy the value of a charter previously granted by the State to the Charlestown Bridge. I shall have occasion to speak of this hereafter.

TO PROFESSOR ASHMUN.

Washington, March 1st, 1832.

MY DEAR SIR:

It is a long time since I have heard from you, but I suppose you are so engaged with the Law School that you find little leisure for other things. I have not written you for two reasons: first, there was nothing new to tell you beyond what all the newspapers told; and secondly, you were not importunate, so that I have obeyed other commands and left undone what I ought to have done. There is, however, a good stock of health about me just now, notwithstanding all our hard and dry labors this winter; and I assure you they have been both hard and dry. I have never known a winter pass away with so few refreshing causes. Except the Cherokee Missionary case, I scarcely remember one which it was not irksome to go over, and *that* was an oasis in the desert.

The Charlestown Bridge case is not yet decided. Some of the Judges had not prepared their opinions when we met; and Judge Johnson has been absent the whole term from indisposition. If half the accounts I hear of him are true, he is in a bad way in point of health. He has been confined the whole autumn and winter at Raleigh, N. C., and is about going southward, or just gone. In regard to the Charlestown Bridge case, I may tell you confidentially that we are greatly

divided in opinion, and it is not certain what the finale may be. Perhaps it may not be decided this term. We shall rise about the middle of March, and I shall find my way home as soon as possible afterwards, so that I may relieve you from some extra duty. I would rather work in the Law School than here. . . .

I dare say you have heard a good deal about the President's health. He is doubtless feeble, and as I hear, (for I have not seen him,) he is manifestly on the decline. Many doubt if he will live through another Presidential term, or even to enter upon it. But there are various rumors on such subjects to which it is difficult to trust. . . . You may ask, what are the prospects of the President for a reelection? My impressions are that he will be reëlected. He enjoys among a certain class of the people an unbounded popularity; and the politicians, though secretly bearing him no love, dare not for their own sakes openly oppose him. All his blindness and mismanagement have had no effect to diminish his personal influence with the people. But he has scarcely any influence of a personal or political nature in Congress. Indeed, his opinions are less valued than those of any man who ever attained a high office here.

I have come to the end of my paper and must bid you good-bye, being very affectionately your friend,

JOSEPH STORY.

The following letter refers to a bill introduced into Congress in 1832, for the apportionment of Representatives among the States of the Union. It provided, as had hitherto been the rule, that the apportionment should be made according to a certain ratio, or divisor, (that proposed being 47,700,) to be applied to the total population of each State, the whole quotient being the number of representatives, and no regard being paid to any fractions. The amendment proposed that the fraction

should be taken into account, so as to allow an additional member in each State for every fraction exceeding in amount one half the ratio adopted, so as to carry out, as far as practicable, the provision in the Constitution requiring representatives to be "apportioned among the several States according to their respective numbers." The bill of 1792 gave one representative for every thirty thousand, leaving the fractions unrepresented, and it was amended in the Senate by allowing an additional representative to the States having the largest fractions. President Washington, under the advice of the Attorney-General, Mr. Randolph, and others of his Cabinet, returned the bill with two objections. "1. That the Constitution has prescribed, that representatives shall be apportioned among the several States according to their respective numbers; and there is no proportion or divisor, which, applied to the respective numbers of the States, will yield the number and allotment of representatives proposed by the bill. 2. The Constitution has also provided, that the number of representatives shall not exceed one for thirty thousand, which restriction is by the context, and by fair and obvious construction, to be applied to the several and respective numbers of the States, and the bill has allotted to eight of the States more than one for thirty thousand." Mr. Jefferson, in an elaborate opinion, argued against the doctrine of apportioning the representatives in any other manner than by a ratio without regard to fractions.

Mr. Everett earnestly and ably advocated the amendment in the act of 1832, but it was not then adopted; subsequently, however, it was made the basis of the act of June, 1842, the ratio being 70,680.

HON. EDWARD EVERETT.

Cambridge, May 31, 1832.

MY DEAR SIR :

I thank you greatly for your numerous favors, which I should have acknowledged before if I had not for some time been engaged in my Circuit Court duties. I especially thank you for your excellent address before the Colonization Society, and for your equally excellent Report on the apportionment bill. I hope to see soon your speech on the latter. I have considered this last subject very attentively; and I am of opinion, not only that the amendment proposed by the Senate is constitutional, but I am also of opinion that it is the only constitutional mode of apportionment. If there has been any deviation from it in the prior acts on the same subject, they cannot be sustained on principle. I have been so struck with the reasoning on this point, that I shall introduce the substance of it into my Lectures on the Constitution in which that clause occurs. I am wholly unable to reason upon the point without being astonished at the course pursued by Congress. Mr. Jefferson's argument, in my judgment, is very flimsy and weak; his best argument is in his correspondence, and that was his real ground; it was a contest between the North and South, and he always went with, if he did not lead, the latter. I impute President Washington's message, and first objection entirely to his urgent influence. The second objection, that it gave to some States more than one representative for every thirty thousand inhabitants is, as I think, unanswerable. Every day I perceive more and more the effects of Mr. Jefferson's extraordinary opinions and acts in every department of our government. It is time his correspondence was fairly and freely reviewed. I shall be glad to receive any other documents which you can spare, upon this subject, (especially Polk's report,) and the other interesting subjects now before Congress. Pray tell Mr. Doddridge I have read his speech with great pleasure, and that I think his



main grounds absolutely impregnable. I should be glad of a copy of any counter speech,—I do not say argument.

I write you in great haste, and am very truly,

Your obliged friend,

JOSEPH STORY.

In the beginning of the year 1832 my father published his Commentaries on the Law of Bailments, being the first text-book written by him from the professorial chair. Hitherto, the only English treatise on this subject had been the essay of Sir William Jones, which, however worthy of praise for its style and method, contained but a mere outline of the general principles of the law relating to Bailments, and was deficient both in accuracy and fulness. At the time when this treatise was written, the celebrated judgment of Lord Holt, in *Coggs v. Bernard*, (Lord Raymond, R. 909,) which is a masterly essay upon the general principles of Bailments, as well as a judgment upon the merits of the particular case, constituted the main expressions of the common law on this interesting subject. But with the lapse of fifty years from that time many cases had arisen in the English and American jurisprudence, by which the law relating to Bailments was greatly enlarged and modified,—and the want of some full and accurate treatise, embodying these later contributions of the Courts, and reviewing and systematizing in their light the whole principles of law applicable to this subject, was very apparent. This want the Commentaries on Bailments fully supply. They are able in their discussion of principles, and liberal in their spirit. Reaching beyond the narrow limits of the Common Law, my father, in this work, by copious importations

from the civil and Roman jurisprudence, has enriched, developed, and rounded the English doctrines into a completeness they never before possessed.

The plan adopted in this treatise is thus stated in the Preface :—

“ My design in the present Commentaries has been, to present a systematical view of the whole of the common law in relation to Bailments, and to illustrate it by, and throughout compare it with, the Civil Law, and the modern jurisprudence of some of the principal nations of Continental Europe. I have treated every branch of the subject (at the hazard of some repetitions) as a distinct and independent subject; believing, that, for elementary instruction, such a course would be found more convenient, as well as more satisfactory, than the common method of reference to other heads. In this, as well as in many other respects, I have availed myself of the example of Pothier and Domat. I have not scrupled to follow in a great measure the method and arrangement of these authors; and I have endeavored to incorporate into my text almost every position to be found in their treatises, which could be of the slightest use, either in a practical or a theoretical view, to a student of the common law; so that the reader, if he is inclined to go over the pages of those authors, will, I trust, find at hand whatever is generally valuable in their collective labors. I have, in like manner, availed myself of the writings of other distinguished civilians and commentators on the Civil Law, as far as their labors appeared to me to afford any new lights in the exposition of my subject.

“ Perhaps some apology may be thought necessary for my having, in a treatise on the English Law of Bailments, borrowed so largely from foreign sources. My reasons are as follows:—In the first place, the learned founder of the Dane Professorship, with that spirit of professional liberality which

has always characterized him, suggested to me at an early period the propriety of my presenting, in all my labors upon commercial law, some view of the corresponding portions of commercial jurisprudence of Continental Europe. To advice so given it was impossible not to listen with the utmost respect; and the wisdom of it has appeared more and more strongly to my mind, as it has been contemplated in all its bearings. In the next place, I have long entertained the belief, that an enlarged acquaintance with the Continental jurisprudence, and especially with that of France, would furnish the most solid means of improvement of commercial law, as it now is, or hereafter may be, administered in America. Mr. Chancellor Kent has already led the way in this noble career; and has, by an incorporation of some of the best principles of the foreign law into ours, infused into it a more benign equity, as well as a more persuasive cogency and spirit. The English common lawyers (it must be acknowledged with deep regret) have hitherto generally exhibited an extraordinary indifference to the study of foreign jurisprudence. Doctor Strahan, in the Preface to his translation of Domat, has spoken on this subject in language of such freedom and force as entitle it to respect. I know not whether one ought to be most struck with the calmness of its rebuke, or with the mortifying severity of its truth. 'I was surprised,' says he, 'to find, in a country [England] where all arts and sciences do flourish and meet with the greatest encouragement, that one of the noblest of the human sciences, and which contributes the most to cultivate the mind, and improve the reason of man, as that of the Civil Law does, should be so much disregarded, and meet with so little encouragement. And I observed, that the little regard, which has of late years been shown in this kingdom to the study thereof, has been in a great measure owing to the want of a due knowledge of it, and to the being altogether unacquainted with the beauties and excellencies thereof; which are only known to a few gentlemen who have devoted themselves to that profession;

others, who are perfect strangers to that law, being under a false persuasion that it contains nothing but what is foreign to our laws and customs. Whereas, when they come to know that the body of the Civil Law, besides the laws peculiar to the Commonwealth of Rome, which are there collected, contains likewise the general principles of natural reason and equity, which are the fundamental rules of justice in all engagements and transactions between man and man, and which are to be found nowhere else in such a large extent, as in the body of the Civil Law, they will soon be sensible of the infinite value of so great a treasure.' Such is the language used by an English civilian more than a century ago. It is lamentable to say, that it may be applied, with but little mitigation, to the general state of the profession of the common law in our day.

"There is a remarkable difference, in the manner of treating juridical subjects, between the foreign and the English jurists. The former almost universally discuss every subject with an elaborate, theoretical fulness and accuracy, and ascend to the elementary principles of each particular branch of the science. The latter, with few exceptions, write Practical Treatises, which contain little more than a collection of the principles laid down in the adjudged cases, with scarcely an attempt to illustrate them by any general reasoning, or even to follow them out into collateral consequences. In short, these treatises are but little more than full Indexes to the Reports, arranged under appropriate heads; and the materials are often tied together by very slender threads of connection. They are better adapted for those to whom the science is familiar, than to instruct others in its elements. It appears to me, that the union of the two plans would be a great improvement in our law treatises; and would afford no inconsiderable assistance to students in mastering the higher branches of their profession.

"In the present work I do not pretend, in any suitable manner, to have accomplished such a plan as is here proposed.

More learning and more leisure than are within my reach are requisite for such a task. I have, however, endeavored to bring together the products of my own imperfect studies. As the work is principally designed for students, I have not hesitated to repeat the same train of remark, whenever, from a new connection, it might be useful to explain a difficulty, or to illustrate a new position or authority. I have also availed myself occasionally of the freedom belonging to a commentator, to express a doubt or to deny a doctrine. But I have rarely done so, except when the point has been purely speculative, or the common law authorities justified me in the suggestion. Whatever is in this respect propounded, is to be considered submitted to the judgment of the reader, as matter worthy of further examination. If I have done any thing to lighten the labors of any ingenuous youths, who are struggling for distinction, or to attract abler minds to a more profound investigation of this branch of Contracts, I shall reap all the rewards which, beyond the mere fulfilment of duty, I have ever proposed to myself. I throw myself on the candor of a profession, from which I have uniformly received indulgence; and offer these Commentaries to the public in that spirit of subdued confidence, which invites examination, and, at the same time, is not unconscious of the real difficulties with which a work of this nature is attended."

The truth of the remarks as to the value of the foreign law in the study and development of our own jurisprudence, could not be better illustrated than by referring to the history of the Common Law on the subject of Bailments. The case of *Coggs v. Bernard* was founded upon Bracton, who drew his principles direct from Justinian; and the treatise of Sir William Jones, which is the only other attempt at systematizing the law on this subject, is built almost entirely on this case, and on the principles and rules of the Civil Law. From the foreign

jurisprudence much of the most valuable and scientific portion of his essay is imported, and from the same source large additional contributions have been subsequently drawn by my father. In fact, therefore, the present English law on the subject of Bailments is but little more than a naturalization of the Roman jurisprudence. Its nomenclature, indeed, plainly denotes the country of its birth;—*Commodatum*, *Mandatum*, *Depositum*, *Locatio*.

The following section, alluding to this plan, closes the Commentaries on Bailments:—

“These Commentaries upon the Law of Bailments are now brought to a conclusion. Upon a review of the whole subject, it will at once occur to the reader, that a great variety of topics, discussed in the Roman and foreign law, remains wholly unsettled in the common law. He will also be struck with the many ingenious and subtle distinctions, singular cases, refined speculations, and theoretical inquiries, to which the free habits of the Civilians conduct them in the course of their reasoning. Let it be remembered, however, that if some of these distinctions and speculations and inquiries seem remote from the practical doctrines of the common law, they may yet be of great utility in the investigation and illustration of elementary principles. They employed the genius, and exhausted the learning, of many of the greatest jurists of antiquity; and they were thought worthy of being embodied in the texts of Justinian’s immortal Codes. In modern times, the noblest minds have thought, that a life of laborious diligence was well rewarded, by gathering together illustrative commentaries in aid of these texts. What, indeed, was juridical wisdom in the best days of imperial Rome, what is yet deemed the highest juridical wisdom in the most enlightened and polished nations of Continental Europe, ought not to be, and cannot be, matter

of indifference to any, who study the law, not as a mere system of arbitrary rules, but as a rational science. The common law has silently borrowed many of its best principles and expositions of the law of contracts, and especially of commercial contracts, from the Continental jurisprudence. To America may yet be reserved the honor of still further assisting in its improvement, by a more intimate blending of the various lights of each system in her own administration of civil justice."

The dedication of this work to Mr. Dane, was as follows:—

"To the Honorable Nathan Dane, LL. D., distinguished alike for purity, simplicity, and dignity in his private life, for talents, learning, and fidelity in his profession, and for public labors in the State and national councils, which have conferred on him an imperishable fame as a statesman and patriot, this work, the first fruits of the professorship founded by his bounty, is respectfully dedicated, by his obliged friend and servant, the author."

This work was received with much praise by the profession, and the most gratifying letters from every quarter proved its complete success. It was immediately introduced as a text-book into the Law School, and formed afterwards the basis of his lectures on this subject.

From the time this work was completed, my father had been engaged upon his "Commentaries on the Constitution of the United States," and towards the latter part of the year 1832, he completed the manuscript and began to print,—having been only about a year and a half in writing the three volumes of this learned and elaborate work. When it is considered, that this

was accomplished in the intervals between his double duties as Professor and Judge, — each of which would seem to be sufficient to occupy, if not to exhaust, an intellect even of energy and power, — his fertility of mind and great resources, as well as his power of enduring continuous labor, appear extraordinary. During the period occupied in the writing of these Commentaries on the Constitution, three months of his time had been spent in attendance on the Supreme Court at Washington, where he had borne his full part in preparing the judgments of the Court; he had also attended all his Circuits in Maine, New Hampshire, Rhode Island, and Massachusetts, and written the opinions of that year, reported in the first volume of Sumner's Reports; he had corrected and printed his Commentaries on Bailments, carefully examining every proof and revise; he had lectured from two to three hours in the Law School every other day, while he was at Cambridge; he had attended at the moot-courts; and besides all this, he had written the address at the consecration of Mount Auburn, the notice of Chief Justice Parker, had conducted an extensive correspondence, and had been ill nearly a month.

The secrets by which he was enabled to accomplish so much in so short a time, — were systematic industry, variation of labor, and concentration of mind. He was never idle. He knew the value of those odds and ends of time, which are so often thrown away as useless, and he turned them all to good account. His time and his work were apportioned, so that there was always something ready for the waste time to be expended upon. He varied his labor; never over-working himself on one subject, never straining his faculties too long in one



direction, but recreating himself by change of occupation. "*Le Changement d'étude est toujours relâchement pour moi*," said D'Aguesseau of himself; and so my father found it. He never suffered himself to become nervous or excited in his studies. But the moment that one employment began to irritate him, he abandoned it for another which should exercise different faculties. When he worked, it was with his whole mind, and with a concentration of all his powers upon the subject in hand. Listlessness and half-attention bring little to pass. What was worth doing at all he thought worth doing well.

And here it may be interesting to state his personal habits during the day. He arose at seven in summer, and at half past seven in winter,—never earlier. If breakfast was not ready, he went at once to his library and occupied the interval, whether it was five minutes or fifty, in writing. When the family assembled he was called, and breakfasted with them. After breakfast he sat in the drawing-room, and spent from a half to three quarters of an hour in reading the newspapers of the day. He then returned to his study and wrote until the bell sounded for his lecture at the Law School. After lecturing for two and sometimes three hours, he returned to his study and worked until two o'clock, when he was called to dinner. To his dinner (which, on his part, was always simple,) he gave an hour, and then again betook himself to his study, where in the winter time he worked as long as the daylight lasted, unless called away by a visitor or obliged to attend a moot-court. Then he came down and joined the family, and work for the day was over. Tea came in at about seven

o'clock ; and how lively and gay was he then, chatting over the most familiar topics of the day, or entering into deeper currents of conversation with equal ease. All of his law he left up stairs in the library ; he was here the domestic man in his home. During the evening he received his friends, and he was rarely without company ; but if alone, he read some new publication of the day, — the reviews, a novel, an English newspaper ; sometimes corrected a proof-sheet, listened to music, or talked with the family, or, what was very common, played a game of backgammon with my mother. This was the only game of the kind that he liked. Cards and chess he never played.

In the summer afternoons he left his library towards twilight, and might always be seen by the passer-by sitting with his family under the portico, talking or reading some light pamphlet or newspaper, often surrounded by friends, and making the air ring with his gay laugh. This, with the interval occupied by tea, would last until nine o'clock. Generally, also, the summer afternoon was varied three or four times a week, in fair weather, by a drive with my mother of about an hour through the surrounding country in an open chaise. At about ten or half past ten he retired for the night, never varying a half hour from this time.

His diet was exceedingly simple. From a great distaste to wine and spirituous liquors of all sorts, he had never tasted either until he was about thirty-two years of age ; having during his college life drank nothing stronger than cider, which, at the college festivities, he chose in preference to more exciting drink. But his unremitted studies in the early part of his life brought on

a chronic dyspepsia when he was about thirty-two years of age, and he was advised by Dr. Danforth (his physician at Washington, and an ardent advocate of temperance) that his system required stimulants, and that his stomach would never regain its tone until he changed his habits of abstinence. Accordingly, at Dr. Danforth's suggestion, he began to take a little weak brandy and water. This, however, was so exceedingly distasteful to him, that, as his health improved, he substituted wine, for which he acquired a taste and became a nice judge of its qualities. But he always drank of it very sparingly, ordinarily taking at dinner a wine-glass of wine to a tumbler of water, and rarely drinking it unmixed, unless in company. His breakfast and tea consisted of stale bread toasted or untoasted, a piece of mutton chop, beef steak, or broiled fish, and a cup of coffee in the morning, and weak tea in the evening. His dinner was principally of simply cooked meat and some simple pudding; but vegetables and fruit, although he was very fond of them, were, with some few exceptions, forbidden to him. Even that staple of the table, potatoes, he never could eat. Pastry, preserves, and made dishes of every kind he was forced to avoid. Between his meals he took nothing. He did not use tobacco in any form. This strict diet he maintained through life, not because he did not enjoy the luxuries of the table, not from asceticism or whim, but from necessity. Yet, though debarred from them himself, he enjoyed the satisfaction which others received from them, with a peculiar gusto.

He had great bodily activity, and the energy shown in every thing he did, expressed itself in his motions, which

were sudden and impulsive. He walked very rapidly, taking short, quick steps, and never sauntering. The exercise he took was almost entirely incidental to his duties, and consisted in driving to Boston to hold his Court or attend to other business, and in walking to and from the Law School. In the summer he used to drive about the surrounding country in the late afternoon, and sometimes to stroll for a half-hour in the garden. But his real exercise was in talking. Conversation was his gymnasium; and his earnestness and volubility of speech, and vivacious gesticulation, afforded the necessary stimulant to his system. Scarcely any thing more rouses the internal organs to activity, or gives more movement to the blood, than talking or singing. To talk was natural and necessary to my father; but he was never more out of his element than when he set forth to take a walk for exercise, and he used to join in our laugh when we jested with him upon it, admitting that he could not bring his mind to it seriously. Yet he never seemed to feel the want of it, and I am fully persuaded, that the constant activity of his body and mind, and especially the excitement of conversation, stood him instead of the exercise which is necessary to taciturn and phlegmatic persons.

He did not often dine out, for although he was extremely social in his nature, and enjoyed such occasions, his health did not allow him to partake of the luxuries of the table, and for the excitement and enthusiasm of the hour, he was frequently obliged to pay by indisposition. By this, also, he lost time, which he could ill afford to spare. But when he did dine out, he was the life and spirit of the table. Even during that heavy

tract of time preceding the announcement of dinner, he was ready and spirited, and after the meats were removed, he poured forth a copious stream of talk, rich in anecdote and reminiscence, sparkling with jest and railery, or flowing in a deeper channel of thought and feeling. At such times, his face lighted up with the most luminous of smiles, and his clear, joyous laugh provoked an irresistible response.

The efforts of my father in the Law School were crowned with success. In the short space during which he had been connected with it, the number of students had advanced from one to forty, and was on a constant increase. He was busily employed in his conversational lectures and moot-courts, and devoting all the time he could command to writing out his Commentaries according to the plan he had laid out. Before the work on the Constitution was entirely written and through the press, he had begun to project his great work on the Conflict of Laws, and to lay out his ground, so that no time should lie idle in his hands. The following letters, among other matters, allude to his occupations, and to the growth of the Law School.

TO JAMES J. WILKINSON, ESQ.

Cambridge, August 25th, 1832.

DEAR SIR:

Although your letter was written as long ago as March, it has but recently reached me; and at a still later time the accompanying package of Professor Park's Introductory Lecture and the new Court Rules. I am greatly obliged to you for both, and shall take the liberty to address a letter to the Professor, returning my personal thanks. You have brought me to a nearer acquaintance, as it were, with some of my

old study friends, by your remarks respecting Mr. Tidd, Mr. Lee, Mr. Harrison, Mr. Holroyd, and Mr. E. Chitty. It is now more than thirty years since Mr. Tidd's Practice was the familiar companion of my office labors. I have always deemed it a *chef d'œuvre*, and admirable for its method, brevity, and accuracy. Most of the works of the other gentlemen are in my library, and several of them have been republished in America. Mr. Harrison's and Mr. Chitty's Digests are, as I think, a great improvement upon all the preceding works of the same sort. Your own work on the Statute of Limitations, is well known here, and is very highly spoken of. It has not, however, been republished, partly because it treats only of one branch of the statute, and partly owing to Mr. Angell's treatise, which embraces the American Decisions. I wish you would recast your work, or rather complete it, by a systematical treatise upon the other branches of the statute. It would much increase its circulation and value.

I have never seen Sheppard's Treatise on Actions for Deeds, and know it only from Worrall's Catalogue. It would gratify me to read it, for I have still a strong relish for the old law, which in my earlier years constituted a favorite pursuit. Very few of the old authors were missing in my library. . . .

I have read Professor Park's Introductory Lecture with very great satisfaction. In America it requires no argument to establish the importance, nay, necessity, of a systematical and scientific study of the Law. No lawyer in this country would, in the present times, deem his education at all complete, without availing himself of the lectures of some Law Institution. Forty young gentlemen are now at the Law School in this place, and I may add, that they know what is passing in Westminster Hall almost as well as what is passing in our own Courts. Your publications of all sorts reach us in a short period; and before I had received Professor Park's Introductory Lecture, I had read in the English Law

Journals the sketches of his whole course for the past season.

Believe me, dear sir, with the highest respect

Your obliged servant,

JOSEPH STORY.

TO HON. JAMES KENT.

Cambridge, October 27th, 1832.

MY DEAR SIR:

I had the pleasure yesterday of receiving your kind letter of the 24th instant. The new edition of your Commentaries had reached me three or four days before. I am unaffectedly gratified by the praise which you bestow on my work on Bailments, though I am but too sensible that your friendship for the author has given an undue value to its merits. Still it is not without its useful influence, for it will stimulate me better to deserve it. No praise from any one could be more dear to me.

I have been for two weeks holding the Circuit Court, and my occupations have been so constant, that I have not had opportunity to do more than glance over the new edition of your Commentaries, and compare a few passages. I perceive everywhere, however, your cautious and examining criticism, and everywhere solid improvements. My deliberate judgment is, that your work will constitute the basis of the most enviable of all fame, that of being the American Blackstone; a title of which you can never be robbed, and which must be as enduring as our Jurisprudence. I shall devote my first leisure to a perusal of the work in its latest form. And I need hardly say, that a copy from your hands, with your affectionate kindness, is to me invaluable.

My Commentaries on Constitutional Law, in three volumes, are now in press, and will be completed by January. They are written with a sincere desire to commend, and to recommend the Constitution upon true, old, and elevated principles. I have cited you freely, and used you frequently

in the work. I regret that I had not possession of your second edition earlier, that I might have made all my citations from it. I shall dedicate the whole work to Chief Justice Marshall.

My next labor will be, to write a treatise on the Conflict of Laws, in all its branches. This will occupy me all the next year, if I have my health. Should I live to complete, as I hope I may, this much needed labor, I mean to dedicate the work to you, for the best of all reasons, that you will have furnished me more materials than any other mind. It will indeed be a proud day to me, if at the close of another year, I can unite my name to yours in such a work.

I envy you the felicity of such a life as yours, closing with literature, ancient and modern. May God long preserve you, a blessing to your country and friends.

I am, most affectionately,

Your friend,

JOSEPH STORY.

The sketch alluded to in the first of the following letters, was a Biographical Sketch of my father, written for the New England Magazine, by the Honorable Edward Everett, and characterized by the elegance and finish which belong to all the productions of that accomplished scholar.

TO HON. EDWARD EVERETT.

Cambridge, December 8th, 1832.

MY DEAR SIR:

I have read your sketch in the New England Magazine with very great satisfaction. It has been written with the kindest feelings, and speaks of me with far more praise than I have any claim to deserve, and certainly with all the favor I could desire. I think you have wrought up the materials with great address and power, and it seems to me to be one



of your happiest compositions. I will not disguise that I feel proud of such kindness; and if I live, I trust I may earn some better title to it.

Nearly two volumes of my work on Constitutional Law are printed, and the whole will be complete by the middle of January. One copy I destine for your library; and I hope you will sometimes allow it a place on your table.

I am very truly and affectionately yours,

JOSEPH STORY.

TO REV. JOHN BRAZER.

Cambridge, December 11th, 1832.

MY DEAR SIR:

It has been my intention to thank you for your excellent discourse on the efficacy of prayer. But I am so hedged in on one side with the Law School, and on the other by writing the finishing part of my work on Constitutional Law, and correcting proof-sheets, that I have not a moment to spare for other thoughts. I have read it with great satisfaction, and think the argument very strong and able. Some of your views appear to me original, and others you have illustrated far better than I have seen anywhere else, in the course of my reading. I think the discourse will be of great public utility. Prayer is so natural to man, and he flies to it almost as an instinct in all cases of distress so constantly, that the argument in its favor strikes home with irresistible force. Few men, who have not habituated themselves to a cold skepticism, are insensible of its efficacy over their own thoughts and feelings.

Yours most truly and affectionately,

JOSEPH STORY.

The proclamation alluded to in the following letter, was that made by General Jackson on the 15th of Sep-

tember, 1832, concerning the ordinance of South Carolina. That ordinance declared, that the acts of the General Government, imposing duties and imposts on the importation of foreign commodities, were in violation of the Constitution, and null; and that South Carolina, in case of any attempt to enforce them, would hold herself absolved from all political connection with the other States, and would proceed to organize a separate Government. The proclamation of General Jackson asserted, in a very forcible manner, the supremacy of the laws of the Union, the right of the Judiciary of the United States to decide upon the constitutionality of the laws, and the total repugnance of the doctrine of nullification, claimed in the ordinance, to the Constitution. Of this proclamation my father says, in another place,—“As a State paper, it is entitled to very high praise, for the clearness, force, and eloquence with which it has defended the rights and powers of the National Government.” It strongly maintains the doctrine always held by my father, that the Constitution does not constitute a mere league of separate sovereignties, but a single nation.

TO RICHARD PETERS, ESQ.

Cambridge, December 22d, 1832.

MY DEAR SIR:

Our political situation is truly alarming, but there is no correspondent feeling of our danger. We have been and are too prosperous to be able to rouse ourselves; I fear we shall be ruined like all other Republics, and by the same means; an overweening conceit and confidence in our own wisdom, and a surrender of our principles at the call of corrupt demagogues.

The President's proclamation is excellent, and contains the true principles of the Constitution; but will he stand to it? Will he not surrender all to the guidance of Virginia, who abhors all those principles? Will he not yield to all which the South dictates, and sacrifice the North? Will not the Constitution be, as in times past, made for the benefit and the feelings and interests of the South? I confess I have very little belief that the South will be satisfied with any other course, except that which surrenders up all the important interests of the non-slaveholding States. What pledge is there that they will not be surrendered? *Timeo Danaos.*

If you should be prevented from attending during any part of the term, I will take notes, and do your duty as reporter for you with pleasure. It will be but a slight return for your thousand kindnesses.

Pray give my kindest regards, with Mrs. Story's, to Mrs. Peters and your daughters, and believe me,

Very affectionately, your friend,

JOSEPH STORY.

## CHAPTER III.

### PROFESSORIAL AND JUDICIAL LIFE.

LETTERS FROM WASHINGTON — MISS FANNY KEMBLE'S ACTING — LINES ADDRESSED TO HER — SOCIAL LIFE AT WASHINGTON — LETTERS ON THE POLITICAL MEASURES OF JACKSON'S ADMINISTRATION — WRITES HIS "AUTOBIOGRAPHY" — PROJECTS A BOOK OF REMINISCENCES — LIBERAL VIEWS AS TO THE RELIGIOUS CHARACTER OF HARVARD UNIVERSITY — "A MORNING DREAM" — PUBLICATION OF COMMENTARIES ON THE CONSTITUTION — ABRIDGMENT — PLAN OF THIS WORK — DEDICATION — LETTERS FROM CHANCELLOR KENT AND CHIEF JUSTICE MARSHALL RELATING TO IT — EXTRACT — RECEPTION OF IT ABROAD — BEGINS "CONFLICT OF LAWS" — LABOR INVOLVED IN WRITING IT — FINISHES IT — DEATH OF PROFESSOR ASHMUN — DISCOURSE — EXTRACT — PROFESSOR GREENLEAF'S APPOINTMENT — SKETCH OF CHIEF JUSTICE MARSHALL — LETTER FROM MARSHALL — "ALLEN *v.* McKEEN" — VIEWS ON MASONRY — JACKSON'S REMOVAL OF THE DEPOSITS IN THE UNITED STATES BANK — LETTER RELATING TO IT — MY FATHER'S CONNECTION WITH THE MERCHANTS BANK OF SALEM.

In January, 1833, my father went as usual to Washington. The following letters, written soon after his arrival, give an account of Miss Kemble's acting: —

TO MRS. SARAH WALDO STORY.

Washington, January 11th, 1833.

MY DEAR WIFE:

You will have learned from my letter, directed to you from Philadelphia, that my progress on my journey had been uncommonly rapid and comfortable. I left that city on Wednesday morning, and arrived the same evening at Bal-

timore. Hearing that Miss Fanny Kemble was to play that evening, although quite fatigued, I concluded to go. . . .

The play was "Much Ado about Nothing." Mr. Kemble played the part of Benedict, and Miss Kemble, of Beatrice. Mr. Kemble is a chaste, correct, and well-disciplined actor, always respectable and sometimes striking; not great, but pleasing. Miss Kemble played Beatrice, in my judgment, admirably. She has a good figure and a good voice, a pleasing, but not a very handsome face; but she has great gracefulness, ease, and presence, thoroughly well-bred, modest, but not timid, full of vivacity, but not turbulent or over-acting. She has a very clear and distinct elocution, slow and well modulated, so that you understand every word she utters; and her tones and emphasis are excellent. She has a complete conception of the character she personates, and enters into it with great animation and force. Beatrice in her hands appeared to me in a new light, and her reading (to use the cant phrase) gave great effect to the wit and coquetry of that spirited character. She gave, indeed, to Shakspeare's words every effect which could be desired. She must have been long in training, for there is the utmost correctness in every word and sentence. All seems measured out, and yet all seems natural. I think she must become a favorite actress both in England and America. I have never seen any one whom I like so well. She is said to be far more powerful in tragedy than in comedy. She is coming to Washington, and if she plays in tragedy, I shall endeavor to hear her. She cannot be, I should think, equal to Mrs. Siddons, but she is a very worthy and kindred spirit. . . .

Yours, affectionately,

JOSEPH STORY.

TO MRS. SARAH WALDO STORY.

Washington, January 20th, 1833.

MY DEAR WIFE :

It was a source of very great pleasure to me to receive your letter by the mail of yesterday, and to know that all is well. The details you have given me of your charitable visits have been as interesting to me as any thing could be. I know not any thing which, on reflection, carries a deeper or a truer pleasure, than the consciousness of administering relief to the poor, the friendless, the sick, and the forgotten. Charity, like mercy, is twice blest ; it blesses him who gives and him who takes. I hope you and Mrs. F. will follow up your efforts, for I believe they may be productive of lasting advantage to these wretched beings.

The Court opened on Monday last, and all the Judges were present, except Judge Baldwin. They were in good health, and the Chief Justice especially looked more vigorous than usual. He seemed to revive and enjoy anew his green old age. He brought with him and presented to each of us a copy of the new edition of his life of Washington, inscribing in the fly-page of mine a very kind remark.

We have had little to do this week in Court, for it is always difficult for some days to get business in a steady train. The lawyers are tardy and reluctant, and they move with unequal efforts at first. Having some leisure on our hands, the Chief Justice and myself have devoted some of it to attendance upon the theatre to hear Miss Fanny Kemble, who has been in the city the past week. We attended on Monday night, and on the Chief Justice's entrance into the box, he was cheered in a marked manner. He behaved as he always does, with extreme modesty, and seemed not to know that the compliment was designed for him. We have seen Miss Kemble as Julia in the Hunchback, and as Mrs. Haller in the Stranger. She played both parts admirably, with great propriety of manner, feeling, and power. I have never seen

any female acting at all comparable to hers. She is so graceful, that you forget that she is not very handsome. In Mrs. Haller, she threw the whole audience into tears. The Chief Justice shed them in common with younger eyes. I do hope that some efforts will be made to get her to Boston, so that you may see her. Her father is truly respectable, but by no means striking. I hear that she was received into the first circles in Philadelphia, and that she impressed those who saw her with a very favorable opinion of her mind and character. . . .

Most affectionately, your husband,  
JOSEPH STORY.

The following lines were written at this time, after hearing Miss Kemble : —

“ Genius and taste, and feeling all combine,  
To make each province of the Drama thine !  
She first to Fancy’s bright creation gives  
The very form and soul ; it breathes — it lives !  
She next with grace inimitable plays  
In every gesture, action, tone, and gaze.  
The last to nature lends its subtlest art,  
And warms and wins and thrills and melts the heart.  
Go ! lovely woman, go ! Enjoy thy fame !  
A second Kemble, with a deathless name.”

The next letter gives us a glimpse into the social life at Washington. The allusion in the last paragraph is to a phrase of General Jackson, who, in speaking of my father, called him “ the most dangerous man in America.”

TO MRS. SARAH WALDO STORY.

Washington, January 27th, 1833.

MY DEAR WIFE :

. . . We dined, by invitation, with Mr. Secretary Livingston on Wednesday last, being invited to dinner at

half past five, and actually sitting down to table at half past seven; so that we have reached at Washington the fashionable hour of St. James's. Mrs. Livingston was unwell, and the party was exclusively composed of gentlemen. The dinner was superb, and unequalled by any thing I have seen at Washington, except at some of the Foreign Ministers, and was served exclusively in the French style, by servants. . . .

On Thursday, we dined with the President at an equally fashionable hour. There were several ladies at the table, and of course I was called on, as one of the Court, to hand a lady to table. Accordingly, it fell to my lot to be in attendance upon Miss McLemore, a niece of the President, who was pleasant, well-bred, and companionable. But on my other side was Dr. Dunglison, a scientific English gentleman, now a Professor at the University of Virginia, with whom I entered into a very free and agreeable conversation. He was full of what Dr. Johnson would call good talk, and I was quite gratified to meet with one with whose mind I could so well sympathize. How he could content himself with a banishment from the elegancies of English life, to which his education entitles him, for the occupation of a college life in the interior of Virginia, is to me most marvellous. He is already the author of some medical books of high character. And, by the by, I may say, that his visit here was to see a Canadian soldier, who was shot during the late war, through the rib, diaphragm, and stomach, and is yet living, and in good health. By one of the most extraordinary efforts of nature, though a considerable aperture was made in the stomach, it adhered to the sides of the abdomen, and there is now a cavity from the outside of about an inch in diameter, through which the operations of the stomach in digestion may be seen. He is sometimes fed by and through this orifice, as well as by the mouth. I am told that it is one of the very few cases which have been known to exist, and that it has brought to light some extraordinary medical facts.



. . . We are on the eve of great political excitements. The debate on the bill reported in the President's late anti-nullification message, will be the cause. Probably all the talent of the two houses will be called forth, with unequalled zeal and earnestness.

I forgot to say, that notwithstanding I am "the most dangerous man in America," the President specially invited me to drink a glass of wine with him. But what is more remarkable, since his last proclamation and message, the Chief Justice and myself have become his warmest supporters, and shall continue so just as long as he maintains the principles contained in them. Who would have dreamed of such an occurrence? . . .

Most truly and affectionately, your husband,

JOSEPH STORY.

The deep interest he had in the Law School, and the desire to connect his name with it, appears in the following letter to his friend Mr. Charles Sumner, then a student at the school. The strength of his language will be observed:—"I would to God, that I might be able permanently to associate my name with it as a perpetuity."

TO MR. CHARLES SUMNER.

Washington, February 6th, 1833.

MY DEAR SIR:

I thank you most sincerely for your kind letter, bringing, as it does to me, so many pleasant reminiscences of Cambridge, of home, and of friends, of pursuits which I love, and interests which I am linked to by professional ties. I rejoice that Mr. Ashmun is well, and that the school goes on with its accustomed zeal. I would to God, that I might be able permanently to associate my name with it as a perpetuity not forbidden by the law.

I should be sorry, that you had so much trouble in your search for Chase's trial, if I did not know that you take pleasure in thus obliging your friends. There are not many, of whom I would venture to ask the favor of troubling themselves with my affairs; but I feel proud to think, that you are among the number, and I have in some sort, as the Scotch would say, a heritable right to your friendship. When you have leisure, read the leading parts of that trial; it is full of good learning and of law, and, on one side at least, full of sound eloquence.

Chief Justice Marshall is in excellent health, never better, and as firm and robust in mind as in body. He will, I think, justify the remark made of Dr. Franklin, when he was above eighty, that he still remained the ornament of human nature. I deem his life invaluable; for his knowledge of constitutional law, his weight of character, his purity of life, and his devotion to the Union, have gained for him a public confidence, which, in the present crisis of our affairs, cannot be supplied by any other man in the country.

Pray, give my kindest regards to Mr. Ashmun, and remember me to all the school, as, like Plowden, "apprentices in the Law."

Affectionately, your friend,

JOSEPH STORY.

During this session of the Supreme Court, the political condition of the country was somewhat disturbed. The nullification doctrines of the South, the tariff of the North, the enforcing bill, and the proclamation and message of General Jackson against South Carolina, introduced much agitating discussion, and threatened to break down the old boundaries of party. In all these important measures my father took a deep interest, and his views in respect to them appear in the following letters, written at this time from Washington:—

TO HON. JUDGE FAY.

Washington, February 10th, 1833.

MY DEAR FRIEND :

I would have written you long ago, if I had had any thing worth communicating ; but, really, every thing here is in so changeable and changing a state, that one hardly knows what will be the rumors or operations of the day. The proclamation and message of General Jackson, the enforcing bill, the nullifying doctrines of South Carolina, and the tariff, each in its turn becomes the object of intense speculation ; and opposite conclusions, as well as guesses, are perpetually arising, as men wish or fear. It is very certain, that the President's proclamation and message, have startled many of his old friends, the sturdy supporters of State rights. Many have come out in rebellion, some hesitate, and many applaud, so that the old foundations seem breaking up, and new elements are floating about for new combinations of parties and of men. . . . Things cannot, however, long remain in this position. The President must either retrace his steps or go forward. I believe he and his cabinet mean to go forward as they have begun. In that event, he will ultimately be deserted by all, or nearly all, the South. The truth is, that the common bond of Union in the South, slavery, will keep them together. They are now half nullifiers, and nearly all secession men, and soon will rally to the support of South Carolina. This is the real purpose of the mission from Virginia to South Carolina. In the mean time, if the Government do not go on, every power will be prostrated, and South Carolina will be triumphant. . . .

The enforcing bill will certainly pass the Senate by a decided majority, and in all probability will pass the House. This will bring on, unless South Carolina secedes, an immediate controversy. The South Carolinians are not very easy in this state of things, and show manifest symptoms of giving back ; I believe they would gladly retreat if they could

with honor, to some more tenable position. They have a formidable minority at home, and have found far less open and cordial assistance than they expected. They calculate, by terrifying the North, to procure a surrender of the tariff. They have been thus far egregiously disappointed. One thing you may depend upon as the settled determination of the South, and that is to abolish the whole protective system. They will be unceasing in their efforts for this purpose, and nothing but a bold and determined front on the part of the North, an open declaration that they will not submit to such a system, will prevent the catastrophe. Modification of the tariff is no part of their real policy. It is destruction, directly or indirectly. We may as well see the truth at once, and meet it like men. . . .

In the Court we are going quietly on. The cases hitherto argued have been of no general interest, and the arguments have not been striking. We have, however, had some fine arguments from Birney and Sargeant of Philadelphia, and Mr. Attorney-General Taney.

I shall not be surprised if, before the session breaks up, there is a great schism among the old friends of General Jackson, leading to an entirely new phase of things. But at present, from the character of the *dramatis personæ*, it is difficult to foretell any thing; so that I am compelled to end as I began my speculations, in smoke.

Give my kindest regards to your wife, and believe me, as in olden times,

Your affectionate friend,

JOSEPH STORY.

TO REV. JOHN BRAZER.

Washington, February 11th, 1833.

MY DEAR SIR:

I have not been unmindful of your wishes since I have been at Washington, nor of the natural interest which you must feel in the present critical state of our public affairs.

In the formation of our Government, we have taken it for granted, that those who are to administer the Government will at all times be the steady friends of its powers, and will always have motives to give it fit impulses for every exigency. I need not say, that every day establishes new proofs that this, if not a false assumption, is at best a very doubtful theory.

Notwithstanding the present difficulties with South Carolina leave open but a single path of duty, and that the case is reduced to this, that the powers of the National Government must be asserted in the most efficient manner, or the Union is dissolved, there are numbers in our public councils who from party views, or timidity, or a temporizing policy, are quite content to leave things as they are, or to let them work themselves clear as they may. General Jackson has taken a firm stand upon constitutional principles, and I think a correct one; but the peculiarity of his present position is, that he is mainly supported by those who were opposed to his election, and yet feel it an absolute duty to assist him cordially and disinterestedly in his present course; and that he is opposed by many of his old State rights friends, is timidly encouraged by others, and is decidedly assisted by a few. The fact is, that he has been compelled by the dangers to the Government to adopt and act upon the true principles of the Constitution; and in so doing, he has necessarily broken in upon the ranks of the party, and the political dogmas of those who brought him into power. At present, a large proportion of the South is against him, and I think the whole South will ultimately adopt the same course. His real strength must come from the Middle and Eastern and Western States. The bill now before the Senate, commonly called the enforcing bill, will pass that body by a decided majority. It will also, I think, pass the House, but it will encounter a violent opposition in the latter. There are many more secret nullifiers than is supposed. The word is odious, but under a milder name, secession, nullification is virtually

maintained by nearly all the South. There is, I fear, very little of cordial attachment to the Union in the South, and especially in Virginia. Her policy is to reduce it to a league, and not to permit it to be a Government. And it is sad to say, that hitherto she has been but too successful in propagating her doctrines. The debate in the Senate has been warm and vehement. It daily grows more so. Mr. Webster is prepared to speak. But he means to reserve himself to reply to Mr. Calhoun. They are the great champions, and no one can doubt where the victory will ultimately rest. It is singular enough, that an open opponent of the Administration should at this moment constitute its main reliance. . . .

Pray, give my kindest regards to Mrs. Brazer, and believe me,

Truly and affectionately

Yours,

JOSEPH STORY.

While my father was at Washington during this term of the Court, he wrote the Autobiographical letter addressed to me, which has made so important a part of the preceding pages. It will be perceived, by the following letter, that he began at this time to think of writing an extended account of his life, with reminiscences and sketches of his contemporaries. This design he repeatedly alluded to during his after life, proposing to write a book somewhat after the manner of Butler's Reminiscences. Stored as his memory was with information relating to the political measures of his times, acquired from behind the scenes, and abounding with delightful reminiscences of the many distinguished men with whom he had been connected, he could not have failed to write a most interesting work, and it is greatly to be regretted that this project was not carried out. Indeed, it was

only a month or two before his death that, during a conversation in which I urged him to undertake this work, he promised, if a year's life should be spared him, to do so. Death cut short these intentions.

TO PROFESSOR TICKNOR.

Washington, January 20th, 1833.

MY DEAR SIR:

It is very gratifying to me to have the pleasure of acknowledging your letter, and its accompaniments. I have never entertained a doubt, that Hollis's donation had been fully and fairly applied to all its proper purposes. But until your communication in the Register I had never been put in possession of the real facts. The case is now beyond any possibility of question by any who have eyes to read or minds to understand. Your exposition is excellent in manner, as well as in matter; and you have abstained, and wisely, from any language to rouse opposition. I confess that you are right, though I could have hardly answered for equal forbearance, if I had been called upon to write the defence. The truth is, that the charge was made without any care whether it was true or false, in order to create odium and generate opposition. The sect cannot imagine that any Baptist could possess views large enough to disregard the peculiar interests of his own sect, and go for Christianity. I do not believe that the clamor will be silenced, but the grounds to sustain it will be removed from all honorable minds. I am extremely anxious to have your exposition republished in some periodical, where it can be preserved for reference. Can it not be put in the Christian Examiner? . . .

In regard to the Memoir, of which I spoke to you, it is complete. It contains a summary of my life and doings. All I wish is, to have some future opportunity to put down a few of my thoughts, feelings, and pursuits. You shall see the Memoir after my return, for the manuscript is at home.

As I have never read it over, there are probably some verbal omissions, which ought to be supplied. If I should have the good fortune to find leisure, I shall be almost tempted at some day to take a more extensive view, and sketch some of my contemporaries, and their acts in which I have borne a part or been a spectator, in the shape of reminiscences.

I am glad to hear that Mrs. Ticknor continues so well. Pray give my kind regards to her. I have seen Miss Fanny Kemble play several times. She is admirable. I hope she will visit Boston.

Most truly and affectionately,

Yours,

JOSEPH STORY.

The communication of Mr. Ticknor in relation to the Hollis donation, referred to in the preceding letter, was a calm and thorough refutation of the following assertions made by Rev. J. D. Knowles, Professor of Pastoral Theology in the Theological Institution at Newton, in an Address before that institution.

“A generous English Baptist, Thomas Hollis, in addition to the establishment of two Professorships in Harvard College, and other donations, founded in 1722, ‘ten scholarships (of ten pounds per annum each) for pious young students, devoted to the work of the ministry,’ four of whom were to be Baptists.<sup>1</sup> How many Baptist students have enjoyed the benefit of these funds, we have no means of ascertaining. If four students had, constantly, from that time till the present, been sustained at Cambridge, on that foundation, more than one hundred graduates would have been added to the num-

<sup>1</sup> Holmes's *American Annals*, vol. i. 599, 552. Backus's *History*, vol. xi. p. 65.



ber of educated Baptist ministers. By some cause, which has not been satisfactorily explained, the funds of these scholarships have been lost, and the benevolent designs of Hollis, have, to a great extent at least, been frustrated."

The liberal views always entertained by my father in respect to all matters connected with the University, appear in the following letter, written several years before the preceding one.

TO PROFESSOR TICKNOR.

Washington, February 15th, 1826.

MY DEAR SIR :

Nothing that respects the welfare of Harvard College is indifferent to me ; and I am always glad to hear from you on that as well as any other subject. I entirely agree in your views as to a new Professor, who shall possess the true enthusiasm of a scholar, and likes the drill. I have been turning my thoughts on this subject for some time. Before I left home I had speculated somewhat on the propriety of taking Professor Stuart from Andover and putting him in the chair of Philology or Moral Philosophy. His talents, attainments, and exclusive devotion to literature would give him great influence. The separation of the Theological College would make the measure less objectionable in a polemic and religious view than formerly ; and his religious opinions would reconcile to the college many minds, which are at present alienated. I have long inclined to think that in the present state of religious opinion, it would be useful not to make any sect exclusive favorites or exclusive exiles. It seems to me, that if we intend to have the institution national, popular, and at the head of learning, we must forget minor distinctions, and select men for their scholarship and talents. I feel a deep interest in the success of Unitari-

anism; but it appears to me, that the studies at college should be wholly free from a sectarian cast. We want to make them not divines or polemics, but scholars, and scientific gentlemen. Perhaps some objections might be made to Mr. Stuart, although I have a strong opinion, that he would accept, if any offer were made him. Professor Patten is younger, and more flexible, and if he is as good a scholar and an enthusiast, as you suppose, he would be more valuable. He is probably enough of an Orthodox man also to win some public favor from that quarter. I will endeavor to get some information respecting him. . . .

I am truly and affectionately

Yours,

JOSEPH STORY.

The next letter explains itself.

TO MRS. JOSEPH STORY.

Washington, February 24th, 1833.

MY DEAR WIFE:

. . . You may remember that last spring you awoke one morning, singing two lines of a song. As I lay awake a few nights ago, I thought of them, and afterwards sat down and wrote some lines, following out their spirit. I was a good deal affected, perhaps superstitiously so, at the time, and then resolved that I would write about the occurrence. But I passed it over, and other pursuits engrossed me.

. . . . .

Very affectionately,

Your husband,

JOSEPH STORY.

The lines alluded to in the foregoing letter, are these:—

## A DREAM.

“ It was a morning dream. I was with my child in heaven,  
and I was singing these words, when I suddenly awoke.”

Pleasant, pleasant 'tis to meet thee,  
When the storms of life are o'er,  
Here, at last, my child, I greet thee,  
On eternity's blest shore.

Many an hour of silent sadness,  
Many an hour of darkest woe,  
Many a tear in midst of gladness,  
Flowed for thee, and still would flow.

Thou wert ever present, dearest,  
With the earliest dawn of day, —  
With the evening shadows nearest,  
Like its pale departing ray.

Memory brought its bitter treasures,  
Buried joys and hopes destroyed,  
Vain regrets and vanished pleasures,  
Thoughts, with many an aching void.

These are past; what death could sever,  
Death unites in love again;  
Spirits here we dwell forever,  
Spirits freed from mortal stain.

Pleasant, pleasant 'tis to meet thee,  
When the storms of life are o'er,  
Here, at last, my child, I greet thee,  
On eternity's blest shore.

In the early part of this year all three volumes of the Commentaries on the Constitution issued from the press, and were immediately succeeded in the spring by

an Abridgment, prepared as a text-book for the Law School and College, and which my father had found time to write between the publication of the original work in the autumn, and the beginning of April, 1833.

The plan adopted in this work, as well as the labor and research which were involved in its composition, will clearly appear in the following extract from the preface :—

“ I now offer to the public another portion of the labors devolved on me, in the execution of the duties of the Dane Professorship of Law in Harvard University. The importance of the subject will hardly be doubted by any persons, who have been accustomed to deep reflection upon the nature and value of the Constitution of the United States. I can only regret that it has not fallen into abler hands, with more leisure to prepare, and more various knowledge to bring to such a task.

“ Imperfect, however, as these Commentaries may seem to those who are accustomed to demand a perfect finish in all elementary works, they have been attended with a degree of uninviting labor and dry research, of which it is scarcely possible for the general reader to form any adequate estimate. Many of the materials lay loose and scattered, and were to be gathered up among pamphlets and discussions of a temporary character ; among obscure private and public documents ; and from collections, which required an exhausting diligence to master their contents, or to select from unimportant masses a few facts, or a solitary argument. Indeed, it required no small labor, even after these sources were explored, to bring together the irregular fragments, and to form them into groups, in which they might illustrate and support each other.

“ From two great sources, however, I have drawn by far the greatest part of my most valuable materials. These are,

The *Federalist*, an incomparable commentary by three of the greatest statesmen of their age; and the extraordinary Judgments of Mr. Chief Justice Marshall upon constitutional law. The former have discussed the structure and organization of the national government, in all its departments, with admirable fulness and force. The latter has expounded the application and limits of its powers and functions, with unrivalled profoundness and felicity. The *Federalist* could do little more than state the objects and general bearing of these powers and functions. The masterly reasoning of the Chief Justice has followed them out to their ultimate results and boundaries, with a precision and clearness approaching, as near as may be, to mathematical demonstration. The *Federalist*, being written to meet the most prevalent popular objections at the time of the adoption of the Constitution, has not attempted to pursue any very exact order in its reasonings; but has taken up subjects in such a manner as was best adapted at the time to overcome prejudices and win favor. Topics, therefore, having a natural connection are sometimes separated; and illustrations, appropriate to several important points, are sometimes presented in an incidental discussion. I have transferred into my own pages all which seemed to be of permanent importance in that great work; and have thereby endeavored to make its merits more generally known.

“The reader must not expect to find in these pages any novel views and novel constructions of the Constitution. I have not the ambition to be the author of any new plan of interpreting the theory of the Constitution, or of enlarging or narrowing its powers, by ingenious subtleties and learned doubts. My object will be sufficiently attained, if I shall have succeeded in bringing before the reader the true view of its powers, maintained by its founders and friends, and confirmed and illustrated by the actual practice of the government. The expositions to be found in the work are less to be regarded as my own opinions, than as those of the great minds which framed the Constitution, or which have been

from time to time called upon to administer it. Upon subjects of government, it has always appeared to me that metaphysical refinements are out of place. A constitution of government is addressed to the common sense of the people; and never was designed for trials of logical skill, or visionary speculation."

This work was dedicated to Chief Justice Marshall by the following letter :

TO THE HONORABLE JOHN MARSHALL, LL. D., CHIEF JUSTICE OF THE  
UNITED STATES OF AMERICA.

Cambridge, January, 1833.

SIR :

I ask the favor of dedicating this work to you. I know not to whom it could with so much propriety be dedicated, as to one whose youth was engaged in the arduous enterprises of the Revolution; whose manhood assisted in framing and supporting the national Constitution; and whose maturer years have been devoted to the task of unfolding its powers, and illustrating its principles. When, indeed, I look back upon your judicial labors, during a period of thirty-two years, it is difficult to suppress astonishment at their extent and variety, and at the exact learning, the profound reasoning, and the solid principles which they everywhere display. Other judges have attained an elevated reputation by similar labors, in a single department of jurisprudence. But in one department, (it need scarcely be said that I allude to that of constitutional law,) the common consent of your countrymen has admitted you to stand without a rival. Posterity will assuredly confirm, by its deliberate award, what the present age has approved, as an act of undisputed justice. Your expositions of constitutional law enjoy a rare and extraordinary authority. They constitute a monument of fame far beyond the ordinary memorials of political and military glory.

They are destined to enlighten, instruct, and convince future generations; and can scarcely perish but with the memory of the Constitution itself. They are the victories of a mind accustomed to grapple with difficulties, capable of unfolding the most comprehensive truths with masculine simplicity and severe logic, and prompt to dissipate the illusions of ingenious doubt, and subtle argument, and impassioned eloquence. They remind us of some mighty river of our own country, which, gathering in its course the contributions of many tributary streams, pours at last its own current into the ocean, deep, clear, and irresistible.

But I confess that I dwell with even more pleasure upon the entirety of a life adorned by consistent principles, and filled up in the discharge of virtuous duty; where there is nothing to regret, and nothing to conceal; no friendships broken; no confidence betrayed; no timid surrenders to popular clamor; no eager reaches for popular favor. Who does not listen with conscious pride to the truth, that the disciple, the friend, the biographer of Washington, still lives, the uncompromising advocate of his principles?

I am but too sensible that, to some minds, the time may not seem yet to have arrived, when language like this, however true, should meet the eyes of the public. May the period be yet far distant, when praise shall speak out with that fulness of utterance which belongs to the sanctity of the grave.

But I know not that, in the course of Providence, the privilege will be allowed me hereafter to declare, in any suitable form, my deep sense of the obligations which the jurisprudence of my country owes to your labors, of which I have been for twenty-one years a witness, and in some humble measure a companion. And if any apology should be required for my present freedom, may I not say that, at your age, all reserve may well be spared, since all your labors must soon belong exclusively to history?

Allow me to add, that I have a desire (will it be deemed

presumptuous?) to record upon these pages the memory of a friendship, which has for so many years been to me a source of inexpressible satisfaction; and which, I indulge the hope, may continue to accompany and cheer me to the close of life.

I am, with the highest respect,

Affectionately your servant,

JOSEPH STORY.

The Commentaries on the Constitution were received with great favor. Complimentary and congratulatory letters poured in from all sides, and among these, I select extracts from two of the most important, as showing the estimate of this work by Mr. Chancellor Kent and Mr. Chief Justice Marshall.

TO HON. JOSEPH STORY.

New York, June 19th, 1833.

MY DEAR SIR:

Avocations of one kind or another prevented me, until recently, of setting down to a diligent and careful perusal of the three volumes of your Commentaries on the Constitution. I have just now risen from the completion of that duty, and I owe it to you and to myself to say, that I have been delighted and instructed from the beginning to the end of the work. It is a most profound, learned, acute, and excellent production, distinguished for its accuracy, fulness, and judgment. Every topic is discussed in a masterly manner. It is complete and perfect throughout, and carries the head and heart captive through every page. It is written with admirable beauty and elegance of style, and under the glow and fervor of patriotism, eloquence, and truth. The first volume was peculiarly interesting, from the extent and exactness of the historical researches, and the peculiar grace and animation of the language. I not only applaud, but admire, your bold

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and free defence of sound doctrine, against the insidious, mischievous, and malignant attacks of Jefferson. I have lately carefully read his four volumes; and while there are a great many things to admire, there are more to awaken disgust and indignation. I am very much pleased to observe the skill and address with which you handle the most delicate and debatable points in our constitutional contests; and if it be any gratification to you, permit me to assure you, that I consider your work to be an incomparable monument of sound and healthy and incontestable constitutional principles.

I have lately been greatly gratified with two very interesting biographical works; I allude, of course, to the lives of John Jay and William Livingston. They were pure, exalted, and illustrious characters, and elevate and adorn the history of our Revolution. Such works as I have been now alluding to, serve to cheer and console me, amidst the selfish, the factious, and the fanatical spirit of the times.

Yours, very affectionately,

JAMES KENT.

TO HON. JOSEPH STORY.

Richmond, July 31st, 1833.

MY DEAR SIR:

I have finished reading your great work, and wish it could be read by every statesman, and every would-be statesman in the United States. It is a comprehensive and an accurate commentary on our Constitution, formed in the spirit of the original text. In the South, we are so far gone in political metaphysics, that I fear no demonstration can restore us to common sense. The word "State Rights," as expounded by the resolutions of '98 and the report of '99, construed by our legislature, has a charm against which all reasoning is vain. Those resolutions and that report constitute the creed of every politician, who hopes to rise in Virginia; and to question them, or even to adopt the construction given by their

author, is deemed political sacrilege. The solemn and interesting admonitions of your concluding remarks will not, I fear, avail as they ought to avail against this popular frenzy.

I am grateful for the very flattering terms in which you speak of your friend in many parts of this valuable work, as well as in the dedication. In despite of my vanity, I cannot suppress the fear, that you will be supposed by others, as well as myself, to have consulted a partial friendship farther than your deliberate judgment will approve. Others may not contemplate this partiality with as much gratification as its object.

Your affectionate friend,

J. MARSHALL.

The concluding remarks, alluded to in this letter, are these : —

“ We have now reviewed all the provisions of the original Constitution of the United States, and all the amendments which have been incorporated into it. And here the task originally proposed in these Commentaries is brought to a close. Many reflections naturally crowd upon the mind at such a moment, many grateful recollections of the past, and many anxious thoughts of the future. The past is secure. It is unalterable. The seal of eternity is upon it. The wisdom which it has displayed, and the blessings which it has bestowed, cannot be obscured ; neither can they be debased by human folly, or human infirmity. The future is that which may well awaken the most earnest solicitude, both for the virtue and the permanence of our republic. The fate of other republics, their rise, their progress, their decline, and their fall, are written but too legibly on the pages of history, if indeed they were not continually before us in the startling fragments of their ruins. They have perished, and perished by their own hands. Prosperity has enervated them, corruption has debased them, and a venal populace has consummated their destruction. Alternately the prey of military

chieftains at home, and of ambitious invaders from abroad, they have been sometimes cheated out of their liberties by servile demagogues; sometimes betrayed into a surrender of them by false patriots; and sometimes they have willingly sold them for a price to the despot, who has bidden highest for his victims. They have disregarded the warning voice of their best statesman; and have persecuted, and driven from office their truest friends. They have listened to the fawning sycophant, and the base calumniator of the wise and the good. They have revered power more in its high abuses and summary movements, than in its calm and constitutional energy, when it dispensed blessings with an unseen but liberal hand. They have surrendered to faction, what belonged to the country. Patronage and party, the triumph of a leader, and the discontents of a day, have outweighed all solid principles and institutions of government. Such are the melancholy lessons of the past history of republics down to our own.

“It is not my design to detain the reader by any elaborate reflections addressed to his judgment, either by way of admonition or of encouragement. But it may not be wholly without use to glance at one or two considerations, upon which our meditations cannot be too frequently indulged.

“In the first place, it cannot escape our notice, how exceedingly difficult it is to settle the foundations of any government upon principles which do not admit of controversy or question. The very elements out of which it is to be built, are susceptible of infinite modifications; and theory too often deludes us by the attractive simplicity of its plans, and imagination by the visionary perfection of its speculations. In theory, a government may promise the most perfect harmony of operations in all its various combinations. In practice, the whole machinery may be perpetually retarded, or thrown out of order by accidental mal-adjustments. In theory, a government may seem deficient in unity of design and symmetry of parts; and yet, in practice, it may work with astonishing accuracy and force for the general welfare. Whatever, then,

has been found to work well in experience, should be rarely hazarded upon conjectural improvements. Time, and long and steady operation are indispensable to the perfection of all social institutions. To be of any value, they must become cemented with the habits, the feelings, and the pursuits of the people. Every change discomposes for a while the whole arrangements of the system. What is safe is not always expedient; what is new is often pregnant with unforeseen evils and imaginary good.

“ In the next place, the slightest attention to the history of the national constitution must satisfy every reflecting mind, how many difficulties attended its formation and adoption, from real or imaginary differences of interest, sectional feelings, and local institutions. It is an attempt to create a national sovereignty, and yet to preserve the state sovereignties; though it is impossible to assign definite boundaries in every case to the powers of each. The influence of the disturbing causes, which, more than once in the convention, were on the point of breaking up the Union, have since immeasurably increased in concentration and vigor. The very inequalities of a Government, confessedly founded in a compromise, were then felt with a strong sensibility; and every new source of discontent, whether accidental or permanent, has since added increased activity to the painful sense of these inequalities. The North cannot but perceive, that it has yielded to the South a superiority of representatives, already amounting to twenty-five, beyond its due proportion; and the South imagines, that with all this preponderance in representation, the other parts of the Union enjoy a more perfect protection of their interests, than her own. The West feels her growing power and weight in the Union; and the Atlantic States begin to learn that the sceptre must one day depart from them. If, under these circumstances, the Union should once be broken up, it is impossible that a new Constitution should ever be formed embracing the whole territory. We shall be divided into several nations or confederacies, rivals in

power and interest, too proud to brook injury, and too close to make retaliation distant or ineffectual. Our very animosities will, like those of all other kindred nations, become more deadly, because our lineage, laws, and language are the same. Let the history of the Grecian and Italian Republics warn us of our dangers. The national Constitution is our last, and our only security. United we stand, divided we fall.

“ If these Commentaries shall but inspire in the rising generation a more ardent love of their country, an unquenchable thirst for liberty, and a profound reverence for the Constitution and the Union, then they will have accomplished all that their author ought to desire. Let the American youth never forget that they possess a noble inheritance, bought by the toils, and sufferings, and blood of their ancestors ; and capable, if wisely improved, and faithfully guarded, of transmitting to their latest posterity all the substantial blessings of life, the peaceful enjoyment of liberty, property, religion, and independence. The structure has been erected by architects of consummate skill and fidelity ; its foundations are solid ; its compartments are beautiful as well as useful ; its arrangements are full of wisdom and order ; and its defences are impregnable from without. It has been reared for immortality, if the work of man may justly aspire to such a title. It may, nevertheless, perish in an hour by the folly, or corruption, or negligence of its only keepers, THE PEOPLE. Republics are created by the virtue, public spirit, and intelligence of the citizens. They fall, when the wise are banished from the public councils, because they dare to be honest, and the profligate are rewarded, because they flatter the people in order to betray them.”

Not only was this work honored in this country and in England, but it was translated into French and German, and received the highest commendations from some of the most distinguished jurists on the Continent.

Professor R. Mohl, of Tübingen, speaking of it in the *Kritische Zeitschrift*, says, —

“ We have in this work, as perfect and excellent a Commentary on the North American Public Law, as can be produced by deep and profound reflection, acute logic, extensive knowledge of the national condition and writings, and just political views. Professor Story, by his able and diligent labors, has, without doubt, done a great service, not only to his countrymen, but also, and in a still higher degree, to the European publicists, among whom his name will receive an honorable fame, as readily awarded as it will be enduring.”

Professor Greenleaf, speaking of these Commentaries, says, —

“ This great work, . . . admirable alike for its depth of research, its spirited illustrations, and its treasures of political wisdom, has accomplished all in this department which the friends of constitutional law and liberty could desire.”

Scarcely was the work on the Constitution through the press, when my father began upon his new work on the Conflict of Laws. The earnestness with which he devoted himself to this task appears by the following letter :

TO RICHARD PETERS, ESQ.

Cambridge, April 24th, 1833.

MY DEAR SIR:

Your letter was most welcome to me, and the affectionate solicitude with which you engage in my personal concerns affects me deeply and gratefully. I do not mean to overwork myself if I can avoid it, and I am sure your counsels will not fail to have an abiding influence upon me. Since

my return I have engaged in a new work, on the Conflict of Foreign and Domestic Law, (*Lex Loci*) a title upon which we have no Treatise in English, and I had almost said no science. It will be a very laborious enterprise, but I shall go to the task with moderation, but with diligence. It will be, I think, my best Law work.

I hope that a diligent perusal of my Commentaries on the Constitution may justify you in your favorable opinion given in advance. The abridgment of it is now almost through the press, in about six hundred and fifty pages; I shall send you a copy of it for your son. Let him keep it as a remembrance that it came from his father's friend.

Upon politics I am fixed. The late compromise is a surrender of the Constitution, to which under no circumstances will I be either a party, or a quiet looker-on. At present, the manufacturers generally, with the folly and selfishness of mere men of the world, are not dissatisfied, because the good is before them and the evil is distant. But some of our best men, engaged in manufactures, view the subject as they ought. And it is the duty of public men and of the press to enlighten public opinion before we are brought to the brink of ruin. I have not much hope, but if there is to be any salvation, it must be from the solid agricultural, commercial, and professional intelligence of the country. . . .

Pray give my affectionate regards to Mrs. Peters and your daughters. I am now overwhelmed with duties; since, by Professor Ashmun's death, the whole care of the Law School is upon me, and we shall have no aid for the present term.

In haste, as ever, affectionately yours,

JOSEPH STORY.

P. S. I thank Judge Hopkinson for his kindness. If he should review my work, I shall be glad if he will notice the Dedication to the Chief Justice. Indeed, I am most anxious that the propriety of that should be felt as a tribute to his extraordinary merits, than for any little fame for myself.

Mr. Walsh has been very kind in his notice, for which I am truly grateful.

My father was not deceived in his estimate of the labor involved in this undertaking. Not only was the subject very intricate in its nature, and entangled in a web of contradictions, but the books necessary to enable him to pursue his investigations were often very rare, and not to be procured in this country. Delay and embarrassment were the necessary result. The plan of his work was new. He had to build an orderly system out of loose, fragmentary, confused and contradictory materials, and to evoke method from their chaos. The labor grew before him. He found the task he had undertaken greater than he suspected. Many explorations ended in nothing; and much time was lost in the search for cases and books, which were beyond his reach. But his temperament was fitted for the task. The very embarrassments he met spurred him on. He rejoiced, as all men of power do, in combating with difficulties. It is for weak men to court easy tasks. The strong man loves the work that tasks his muscles, and strains him to his best. None of his works interested him like this, and he threw upon it his whole weight, and gave to it all the time he could command. In April he began it, and by the close of the year, notwithstanding many interruptions and more than usual professional labor, it was finished.

The saddest and most serious interruption was occasioned by the death of his friend and co-professor, Mr. Ashmun, on April 1st, of this year. This loss not only brought with it the gloom which necessarily accompa-



nies the severance of friends by death, but for a time threw upon him the additional burden and anxiety of Mr. Ashmun's professorial duties. On the 5th of April, Mr. Ashmun's funeral took place, and my father on this occasion pronounced a discourse commemorative of him in the College Chapel. This discourse, which was prepared in the short interval between his death and burial, is a warm and graceful tribute of friendship to the character and powers of Mr. Ashmun. The following extract contains a sketch of his character :—

“My own acquaintance with him commenced only with his residence in Cambridge. But ever since that period I have counted it among my chief pleasures to cultivate his friendship, and justify his confidence. Engaged as we have been, in kindred pursuits and duties, it has been almost of course, that our intercourse should be frank, as well as frequent; and I feel a pride in declaring, that we have worked hand in hand with the most cordial fellowship, and with a union of opinion, which nothing but the strongest mutual attachment could have successfully cherished. I can, therefore, with all sincerity of heart, join the general voice of his afflicted relatives and friends, in bearing testimony to his rare endowments and exalted merits.

“In the private and domestic circle he was greatly beloved, as well as respected. He was confiding and affectionate; and, as an elder son, occupying the place of a parent, he indulged a truly paternal kindness towards the younger branches of the family, mixed up with the eager solicitude and sympathy of a brother. In his feelings he possessed an enlightened benevolence, and a warm sensibility; and was gratified by an opportunity to advance those, who were within the sphere of his influence. He was a man of the most inflexible honor and integrity, a devout lover of truth,

conscientiously scrupulous in the discharge of his duties, and constantly elevating the standard of his own virtue. His candor was as marked, as his sense of justice was acute and vivid. He held in utter contempt that low and grovelling spirit, which contented itself with common observances, so as not to offend against the established decencies of life; which was sordid, as far as it dared; and mean, as far as it was safe. And yet the voice of censure rarely escaped from his lips; and he seemed solicitous to moderate the language of the sentence, even when truth demanded that he should not withhold it. He habitually softened the lineaments of the portraits, which he had no wish to gaze on, or to sketch.

“He had also, as might easily be gathered from what has been already said, a deep sense of the value and importance of religion; though, from his ill-health, he was of late years compelled to abstain a good deal from its public solemnities. In his opinions he was unequivocally a Unitarian, without the slightest propensity to proselytism or bigotry. His great aim was to be good, and not merely to seem so. He had a profound feeling of his responsibility to God for all his actions, and clung with devout reverence to the doctrines of life and immortality, as revealed in the gospel. His opinions on these subjects were not built upon transitory emotions; but they grew up and mingled with all his thoughts, and gave to them a peculiar transparency and force. They imparted a serenity and confidence, which may be truly enumerated as among the choicest of human blessings.

“In his general deportment, he was modest and reserved, less desirous to please than his high powers would have justified, and never eager either for contest or victory. On this account, as well as on account of his thoughtful aspect, he was often supposed, on the first approaches, to be cold or indifferent, having little relish for social scenes and the lighter pleasures of life. This was far from being true; for among those with whom he was intimate, no man was more social in his temper, more indulgent in playful and delicate humor,

or more familiar in easy conversation. His abstinence from general society was partly from choice, and partly from duty. Besides ill health, he felt another disadvantage from the infirmity of a slight deafness, with which he had been long afflicted. Time, also, was to him inestimable. It was a prize, not to be thrown away, but to be employed in intellectual advancement, in widening and deepening the foundations of his constantly accumulating knowledge. Though he read much, he thought still more; and there was a freshness in all his views, which stamped them at once with the impress of originality.

“But it is chiefly in a professional point of view, that he should be remembered in this place, as at once an ornament to be honored, and an example to be followed. If we look at his years, it seems almost incredible, that he should have attained so high a distinction in so short a period. Let it be recollected, that he died before he had attained the age of thirty-three; and that he had then gathered about him all the honors, which are usually the harvest of the ripest life.

“The law is a science of such vast extent and intricacy, of such severe logic and nice dependencies, that it has always tasked the highest minds to reach even its ordinary boundaries. But eminence in it can never be attained without the most laborious study, united with talents of a superior order. There is no royal road to guide us through its labyrinths. They are to be penetrated by skill, and mastered by a frequent survey of landmarks. It has almost passed into a proverb, that the lucubrations of twenty years will do little more than conduct us to the vestibule of the temple; and an equal period may well be devoted to exploring the recesses. What, then, shall we think of a man, who in ten years had elevated himself to the foremost rank, and laid the foundations of deep, various, and accurate learning? What shall we think of a man, who, at that early period, was thought as worthy, as any one in the profession, to fill the chair just

vacated by the highest judicial officer of the Commonwealth, in the full vigor of his own well-earned fame?

“There were difficulties yet to be overcome in the case of Mr. Ashmun, which bring out in stronger relief the traits of his professional character, and invest it with a peculiar charm and dignity. He was defective in some of the most engaging and attractive accomplishments of the bar. Owing to ill health, he could not be said to have attained either grace of person, or ease of action. His voice was feeble; his utterance, though clear, was labored; and his manner, though appropriate, was not inviting. He could not be said to possess the higher attributes of oratory, copiousness and warmth of diction, persuasiveness of address, a kindling imagination, the scintillations of wit, or the thrilling pathos which appeals to the passions. Yet he was always listened to with the most profound respect and attention. He convinced, where others sought but to persuade; he bore along the Court and the jury by the force of his argument; he grappled with their minds, and bound them down with those strong ligaments of the law, which may not be broken, and cannot be loosened. In short, he often obtained a triumph, where mere eloquence must have failed. His conscientious earnestness commanded confidence, and his powerful expostulations secured the passes to victory. It has been said, and I doubt not with entire correctness, that, in the three interior counties of the State, to which his practice extended, he was, during the last years of his professional residence, engaged on one side of every important cause. Certain it is, that no man of his years was ever listened to with more undivided attention by the Court and Bar, or received from them more unsolicited approbation. If, to the circumstances, already alluded to, we add his ill health and deafness, his professional success seems truly marvellous. It is as proud an example of genius subduing to its own purposes every obstacle, opposed to its career, and working out its own lofty destiny, as could well be presented to the notice of any ingenuous youth. It is as

fine a demonstration, as we could desire, of that great moral truth, that man is far less what nature has originally made him, than what he chooses to make himself.

“If I were called upon to declare, what were the most characteristic features of his mind, I should say they were sagacity, perspicacity, and strength. His mind was rather solid than brilliant; rather active than imaginative; rather acute in comparing than fertile in invention. He was not a rapid, but a close thinker; not an ardent, but an exact reasoner; not a generalizing, but a concentrating speaker. He always studied brevity and significance of expression. And hence his remarks were peculiarly sententious, terse, and pithy; and sometimes quite epigrammatic. He indulged little in metaphors; but when used, they were always direct, and full of meaning. Few persons have left upon the minds of those, who have heard them, so many striking thoughts, uttered with so much proverbial point, and such winning simplicity. They adhered to the memory in spite of every effort to banish them. They were philosophy brought down to the business of human life, and disciplined for its daily purposes. He possessed, in a remarkable degree, the faculty of analyzing a complicated case into its elements, and of throwing out at once all its accidental and unimportant ingredients. He easily separated the gold from the dross, and refined and polished the former with an exquisite skill. He rarely amplified by illustrations; but poured at once on the points of his cause a steady and luminous stream of argument. In short, the prevailing character of his mind was judgment, arranging all its materials in a lucid order, moulding them with a masterly power, and closing the results with an impregnable array of logic.

“I had almost forgotten to add, that when, about a year ago, the Legislature of this Commonwealth authorized the formation of a new code of our laws, he was selected, in connection with two of our most distinguished jurists, to give it its appropriate form and body. To such a task, what rare

qualifications must be brought! If I have but succeeded in impressing upon others my own deep sense of his capacity for the task, who is there, that will not join me in lamenting his death as a public calamity?

“I must close these hasty sketches, thrown together in the midst of various cares, and with the languor of a drooping spirit. And yet I would not close them in the language even of gloom, and far less of discontent. In the natural course of events, indeed, the thought might have been indulged, that our respective places would be changed; and that he might be called upon, at some future time, to perform a kindred office for one, who had cherished his friendship, and partaken of his labors. To Providence it has seemed fit to order otherwise. Nor can we justly mourn over the loss of such a man, as those who are without hope or consolation. Thanks be to God, in the midst of our sorrows there yet spring up in our hearts the most soothing recollections, and the most sublime contemplations. He is but removed before us to a more exalted state of being, immortal and unchangeable. We have nothing to regret but for ourselves. The tears, that fall upon his grave, are unstained by any mixture of bitterness for frailty, or for vice. The circle of his life was not large, but it was complete. If he had lived longer, he might have reared more enduring monuments of fame for posterity; but his virtues could not have been more mature, or more endeared. They are now beyond the reach of accident, or question. They are treasured up among the records of eternity. He lived, as a wise man would aspire to live. He died, as a good man would desire to die. Well may we exclaim: ‘How beautiful is death, when earned by virtue!’”

On April 23d, the Corporation of the College met, and, at the recommendation of my father, unanimously elected Simon Greenleaf, Esq., a distinguished lawyer at the Maine Bar, as successor to Mr. Ashmun. The vote

of the Corporation was forwarded to Mr. Greenleaf, with the following letter:—

TO SIMON GREENLEAF, ESQ.

April 24th, 1833.

MY DEAR SIR :

I have the pleasure to inform you, that at a meeting of the Corporation of Harvard College, yesterday, (all the members of the Board being present,) you were unanimously elected Royall Professor of Law, to fill the vacancy occasioned by the death of Professor Ashmun. I congratulate you, but more the institution, on this choice. To me it will be an inexpressible gratification to be hereafter associated with you in the labors for the improvement of your favorite science.

Very truly and affectionately yours,

JOSEPH STORY.

The appointment was accepted by Mr. Greenleaf, but in consequence of his inability immediately to assume the duties of the office, James C. Alvord, Esq. took his place during the term; and in the succeeding July, Mr. Greenleaf removed to Cambridge and commenced his lectures. This appointment was in every way agreeable to my father, who found in Professor Greenleaf an able and willing coadjutor and a personal friend.

During this year my father revised the Sketch of the Life and Services of Chief Justice Marshall, which he had previously written for the American Monthly, and printed it in the American National Portrait Gallery. On the publication of this, he received the following letter from the Chief Justice.

TO HON. JOSEPH STORY.

Richmond, July 31st, 1833.

MY DEAR SIR:

. . . I have received the third number of the National Portrait Gallery, and know not in what terms to express my obligations to you for the more than justice you have done the character of your brother Judge. In this instance, too, all must perceive the partiality of a friend. Be assured that he, on whom that partiality is bestowed, will carry with him to the grave a deep sense of it. I am particularly gratified by the terms in which you speak of my father. If any contemporary, who knew him in the prime of manhood, survived, he would confirm all you say of him.

I have received the paper containing your opinion in the very important case of *Allen v. McKean*. It is impossible a subject could have been brought before you on which you are more completely *au fait*. It would seem as if the State legislatures (many of them at least) have an invincible hostility to the sacredness of charters. From the paper, I should conjecture that this case will proceed no further. . . .

Your affectionate friend,

J. MARSHALL.

The case of *Allen v. McKean*, (1 Sumner's R.) alluded to in this letter, involved the discussion of a question similar to that which arose in the celebrated case of *Dartmouth College v. Woodward*, (4 Wheaton's R. 675.) It grew out of an Act of the legislature of Maine, by which the President's tenure of office was altered, and President Allen was removed; and the main question in the case was, whether this Act was unconstitutional as "impairing the obligation of a contract." The Court held that it was, and that the authority reserved by the



legislature under the charter of the College, "to grant further powers, to alter, limit, annul, or restrain any of the powers by this Act, vested in the said Corporation, as shall be judged necessary to promote the best interests of the College" did not extend to any intermeddling with its property, or to the extinction of its corporate existence, or to the creation of new Boards. In the course of the judgment, the distinction between public and private corporations is clearly pointed out, and the visitatorial power defined and limited.

In a letter from Judge Hopkinson, this judgment is thus spoken of:—

TO HON. JOSEPH STORY.

Philadelphia, August 1, 1833.

MY DEAR SIR:

A couple of pious old ladies were discussing the respective merits of several clergymen, by whose preaching and praying they had been edified. They agreed upon the superiority of Mr. A. for a Fast day; of Mr. B. for a funeral sermon; and Mr. C. for a charity discourse. "But," said one of them, "give me Mr. D. for a drought." Now I say, give me Judge Story for a constitutional, corporation question.

The opinion you have been kind enough to send me in the case of *Allen v. McKean*, I have read with equal pleasure and instruction. Nothing can be more satisfactory; and it is the more so, as its foundations are rested on the doctrines delivered, and I may say, established, in the Dartmouth College case; which, I will venture to say, contains as much important constitutional law, especially in relation to corporate rights, as was ever put into the form of a judicial argument.

God bless you and your works, and your wife likewise.

Most truly yours,

JOS. HOPKINSON.

The following letter will show his views in respect to the institution of Masonry, then made a party question in New England.

TO HON. EDWARD EVERETT.

Cambridge, July 30th, 1833.

MY DEAR SIR :

I thank you for your letter of yesterday. The letter of the Chief Justice (Marshall) is quite interesting, and accords with the sentiments I have heard him several times express of late years. I suppose that most of his friends entertain similar opinions with him ; and it seems difficult to resist the opinion that the utility of Masonry, whatever it may have been in times past, has ceased. If it could be dissolved without heart-burnings, it would be a desirable event.

I am not a Mason, and of course know nothing of its secrets. And hitherto I have endeavored to entertain a firm neutrality, and not to combine myself with anti-Masonry. The latter, so far as it assumes a political cast, is, I think, too exclusive.

In regard to your opinions on the subject of Masonry, I do not entertain the slightest doubt of your sincerity in maintaining them. As far as I know, (but I have not ample means of knowing) they are, in the abstract, held by many of our mutual friends, and by many of our most decided political associates. Nor should I see personally the slightest objection to your avowal of those opinions, if I did not fear, that the avowal might be used for purposes which you would not approve, and for objects wholly beside your wishes.

I have felt anxious of late, that you should, if possible, keep yourself in a state of neutrality, though not of indifference, on the subject, for your own sake, and for the sake of our country. The reputation which you have so fully and so gloriously earned belongs to both ; and with the best intentions, I could not but foresee that the moment you

should take a step on the subject, you might involve yourself in some embarrassments with the ardent partisans on one side or the other. I do not know that it was possible for you to avoid the controversy ; but I should have earnestly desired it, if possible. As to the notion that you meant to desert the National Republican party, and thus to overturn the doctrines of your whole past political life, I never had the slightest suspicion of it. And I cannot believe that such an opinion has had general credence anywhere. I reject it *toto animo*.

As to my own personal feelings and friendship, I trust you understand me well enough to know that your opinions on this subject would not in the slightest degree affect either the one or the other. If your opinions differed from mine on points of this sort, I am incapable, I trust, of doing injustice to your own enlightened views, and of being governed by any narrow spirit of intolerance. But in the main, and as far as I have any opinions on the subject, my views in the abstract coincide with yours as to the inutility of the subject, and its liability to abuse. So that you may depend upon it that I shall not cross your path, but stand by you, a stanch lover of the Union and National Republican principles, through evil report and good report. . . .

I write you in great haste and beg you to believe me, as ever,

Truly and affectionately,

Yours,

JOSEPH STORY.

It was during this year that General Jackson, as President, removed the government deposits from the United States Bank, and while destroying at once a National Bank and endangering the prosperity of the country, answered all argument with a simple "I take the responsibility."

The following letters will show the views of my father on this subject.

TO HON. JUDGE FAY.

Washington, February 18th, 1834.

MY DEAR FRIEND :

I have waited some time in the hope that when I should write to you, I might be able to communicate something respecting public affairs here beyond what might be gathered from the newspapers. But in this I am disappointed. Every thing here except the President's will is as uncertain as it possibly can be. And I confess that I feel humiliated at the truth, which cannot be disguised, that though we live under the form of a republic we are in fact under the absolute rule of a single man. . . . I seem almost, while I write, to be in a dream, and to be called back to the last days of the Roman republic, when the people shouted for Cæsar, and liberty itself expired with the dark but prophetic words of Cicero. . . .

In the mean time there are immense embarrassments, in regard to future events, arising among the different parties which oppose the Administration. The question, who shall be the next President, mingles with every measure, and there is no concert or solid union as to men or measures. The Nullifiers are against a bank, but also against the removal of the deposits. The National Republican party are for a bank and for a restoration of the deposits. All persons admit the expediency of a bank, but many, with true metaphysical obstinacy, deny its constitutionality, after all our experience and all our decisions on the point. . . .

While I was writing this letter, the death of Mr Wirt has been announced. You know his reputation well, as among the ablest and most eloquent of the bar of the Supreme Court. So we depart, one after another, and leave to the frail

memories of our contemporaries our fame and our acts, and to our families regrets which cannot be recalled, and sorrows which settle down into a fixed despondency.

Farewell, and may God bless you and your family, is the wish of one who always recollects himself to be, and long to have been, your sincere friend,

JOSEPH STORY.

In answer to a letter from Mr. Webster, asking for my father's opinion upon certain legal questions in respect to the President's removal of the deposits, with his usual promptitude he thus writes:—<sup>1</sup>

TO HON. DANIEL WEBSTER.

Cambridge, December 25, 1833.

MY DEAR SIR:

I will with great pleasure give you the thoughts, which at present strike me in regard to the questions which you propose for my consideration.

The first question may induce two views, one of which is strictly legal and the other political. In a legal point of view it does not appear to me, that the sixteenth section of the Bank charter involves any other obligation, than that the deposits of the public money shall be made in the United States Bank, unless the Secretary of the Treasury shall otherwise order or direct. But there is no cause assigned for which he may remove, and therefore he has the whole discretion upon the subject as to cause and object, provided only, that he acts *bonâ fide*, and not with intent to evade the provision. I cannot, therefore, as a lawyer, see any ground upon which to place his right, as one limited to the case of danger to the security of the deposits. The law has confided to him

<sup>1</sup> See Mr. Webster's speech in the Senate of the United States, on the President's Protest, May 7, 1834.

a great trust, which it supposes he will perform with fidelity. Both parties have made his discretion the *casus fœderis*, and he may act upon his own honest discretion, for any thing I can see in the Act, and he is justified, so far as the terms of the Act are concerned. The only check upon his discretion is, that he must assign the reasons to Congress, who, of course, are thus placed in a situation to revise or review the decision if they please. But I think, (and in this I differ *toto cœlo* from Mr. Taney) that it is a purely personal trust in the Secretary, and as much so, as if it had been confided to the Chief Justice of the United States. It has nothing to do with the ordinary duties of his department. The power grows not out of any general authority, given by other laws, but it is, as between these parties, for this purpose, a special umpirage created by the Act, and binding as a part of the contract. It is no answer to say that, if the section had not been there, he might, in virtue of his general authority, have controlled the public funds at his pleasure. *Pro tanto*, this Act modifies and restrains such authority. It is an appeal to him to act, as a special agent selected by both parties, when he decides. I think, then, that the President has not the slightest right to interfere with the business. It is taken out of the sphere of Executive action. It belongs to the Secretary and to him alone, and any interference by the President to control or influence his judgment, much more to deter him from exercising his judgment, is, on the part of the President, a departure from his duty, and if the Secretary acts upon the opinion of the President, and not upon his own, I think he virtually violates the charter and abandons his trust.

So far as to the legal view. But politically, I think the charter manifestly contemplated, and so was understood by all parties, that the deposits should not be withdrawn by the Secretary, except for high and important reasons of state, upon unexpected emergencies, and cases where the action of Congress could not be obtained until after it was necessary

to act. The whole history of the charter shows this understanding, and in a political point of view it strikes me as wholly indefensible to remove the deposits, unless some pressing case of this sort is made out. It is curious enough, that the Secretary insists that the power belongs to him independently of the Act of Congress, and yet contends, that Congress cannot direct the withdrawal; but he may. How can this be, if he is not the chosen agent of both parties by the contract? Congress may certainly repeal or modify his general powers. I agree with him that Congress could not remove the deposits without his consent; but I think they may require them to be restored without his consent. They may prevent his acting in favor of themselves, but they cannot act against the Bank without his consent, and through him.

As to the other point, I do not know precisely what are all Mr. Taney's arrangements with the State Banks. But supposing them to be that he will permanently make deposits, and they shall be the permanent depositaries of the public funds, upon their agreeing to remit them from place to place as he shall require, and that they shall in some sort be bound for each other, which I merely conjecture, from his report, to be the terms, I should say unhesitatingly, that he has no authority to bind the United States, and that the State Banks had not (as far as I know the nature of their charters) any authority to make such contracts. I am sure the Massachusetts Banks have no such powers. Nor do I believe either the State government or the stockholders would ever assent to such conditions. The State Banks may receive deposits of the United States, as they do those of other Banks. But they cannot make any sort of contract as a consideration of those deposits; they can only contract within the ordinary limits of common banking usages. My views, in short, are these:—

1. The Secretary is the chosen agent or umpire of both parties, as to removal or non-removal.

2. His discretion is not limited to cases of danger to the deposits, but extends over the whole field of political discretion.

3. He must *bonâ fide* exercise it independently and for himself.

4. The President has no right to interfere in the business in any shape.

5. If he does, and the Secretary acts in pursuance of his orders, influence, or control, and without an independent exercise of his own judgment, he violates his trust. It is a wrong to the Bank and to its rights.

6. The State Banks have no proper authority to enter into such contracts, as are stated, and the Secretary has as little right permanently to bind the United States in any arrangements of this sort. It is beside the common duties of his office, and requires express authority.

I write you in very great haste, and merely my first thoughts, being overwhelmed with business, and driven to the top of my speed.

Yours always, most affectionately,

JOSEPH STORY.

The following extract from a letter of J. W. Treadwell, Esq., is interesting in this connection. He says,—

“An event occurred while your father was President of the Merchants’ Bank in Salem, and residing in Cambridge, which I ought not to omit. It is well known that on the accession of General Jackson to the Presidency, he adopted the rule of ‘rewarding his friends and punishing his enemies.’ The Merchants’ Bank had always, since its establishment, been the depository of the funds of the United States Treasury, which had often been large, and contributed to swell its dividends. A memorial was forwarded by one of the other banks in Salem, asking that the United States deposits should be removed to it, and among other reasons for the



removal, it stated, 'that the President and Cashier of the Merchants' Bank, particularly the latter, being bitter, uncompromising opponents of the administration, their whole means and influence are employed in thwarting its measures, and endeavoring to excite the people against it.' An answer to this memorial was drawn up, by direction of the Board, and forwarded to your father for his inspection and approval, and I have the original draft now before me, with this interlineation upon the charge in his own handwriting:

'The directors hardly know in what manner to answer the charge, without using the most severe language, at once expressive of astonishment and indignation. In relation to the President of the Bank, the high judicial office which he holds places him beyond the sphere of political excitements and connections, and it is notorious, that he has withdrawn from political strife and party exertions ever since he first took his seat on the Bench. At the same time, he claims, in common with every other citizen, the right decently to express his opinions in regard to public men and measures whenever he may deem it expedient. But that he has ever exerted any influences, as President, in or out of the Bank, to the injury of the present administration or its friends, is utterly false. There is not even a color of pretence to sustain the charge.'

"I ought also to say, in justice to the high-minded courtesy of the Secretary of the Treasury, Mr. McLane, that a copy of this memorial was at once transmitted by him to the Merchants' Bank. It is almost needless to say, that the public money was left undisturbed in the Merchants' Bank."

## CHAPTER IV.

### PROFESSORIAL AND JUDICIAL LIFE.

PUBLICATION OF THE CONFLICT OF LAWS—RECEPTION OF IT—NOTICES—PREFACE—LETTERS RELATING TO IT FROM CHANCELLOR KENT, JUDGE HOPKINSON, MONS. FÉLIX, J. FERGUSSON—AN ESSAY ON “STATESMEN: THEIR RARENESS AND IMPORTANCE”—LETTER RELATING TO IT FROM CHIEF JUSTICE MARSHALL—CORRESPONDENCE ON THE FREEDOM OF RELIGIOUS WORSHIP GRANTED BY THE CHARTER OF MASSACHUSETTS COLONY—ARGUMENT ON THE SUBJECT—LABOR—WHEATON *v.* PETERS—DEATH OF MR. JUSTICE JOHNSON—CHANGES IN THE COURT—LECTURE ON THE SCIENCE OF GOVERNMENT—EXTRACT—CONSTITUTIONAL CLASS BOOK—MR. SUMNER’S CONNECTION WITH THE LAW SCHOOL—RESIGNATION OF MR. DUNLAP—BIOGRAPHICAL SKETCH OF MY FATHER BY MR. GREENLEAF—EXTRADITION OF FUGITIVES FROM JUSTICE—DEATH OF CHIEF JUSTICE MARSHALL—DISCOURSE BY MY FATHER—PROCEEDINGS ON THE OPENING OF THE SUPREME COURT—LINES TO BE INSCRIBED ON A CENOTAPH TO MARSHALL.

In the early part of the year 1834, the Commentaries on the Conflict of Laws were published. It was this work which put the seal to my father’s reputation abroad as a jurist. The admirable method and style, the vast learning with which the principles of international jurisprudence are illustrated, the clearness and power of the legal discussions, the candor and acuteness with which conflicting opinions and doctrines are analyzed and compared, and the comprehensive generalizations by which they are systematized, justly entitle it to be considered

as the most remarkable of my father's treatises. As it was the first systematic development of the subject in the English language, so in its department it still stands alone, and there seems to be a striking propriety in the fact, that by America, which is a federation of nations, should be given the first and ablest treatise on the conflict of national laws.

Extending as it does beyond the confines of the common law, and discussing principles of universal application and interest, it commanded a public not before reached by his previous works. "No work on national jurisprudence," as was said in the *London Law Review*, "merited or ever received greater praise from the jurists of Europe." In the public journals at home and abroad, it was noticed with high encomiums.<sup>1</sup> A writer in the *English Jurist*, speaking of it, says: "It is absolutely refreshing to sit down to the task of commenting on a work such as that before us, of which we may commence by saying, that if the subject-matter is vast, the arrangement is philosophical and lucid, and the style is almost classical;" and the *Edinburgh Law Journal* speaks of it as a "work altogether of so excellent a description, and betokening a mind so completely imbued with the purest principles of legal philosophy, that it ought to be in the hands of every person who aims at studying, in an intelligent way, the higher departments of professional knowledge." It was reprinted at once in England, and but a short time elapsed before it was translated and published in France and Germany. Contrary to the usage of the English Bar, it was cited in their Courts, and spoken of

<sup>1</sup> Some of these will be found collected in the Appendix.

in terms of high praise, and Sir N. C. Tindal, Chief Justice of the Common Pleas, alluding to an important distinction drawn by counsel from this work, says of it, in delivering the opinion of the Court, that "it would be unjust to mention [it] without at the same time paying a tribute to the learning, acuteness, and accuracy of its author."<sup>1</sup>

In America, also, a like honor was paid to this work. The American Review of New York says: "The various, deep, and rare learning of this work is not more remarkable than its luminous arrangement, the natural succession of its topics, and the fulness of its illustrations;" and in an argument before the Supreme Court of the United States, in the case of the steamer *Lexington*, Mr. Webster pays the following compliment to it:—

"It is a great truth that England has never produced any eminent writer on national or general public law,—no elementary writer who has made the subject his own, who has breathed his own breath into it, and made it live. In English judicature Sir William Scott has, it is true, done much to enlighten the public mind on the subject of prize causes, and in our day Mackintosh has written a paper of some merit. But where is your English Grotius? Where is your English Barbeyrac? Has England produced one? Not one. The English mind has never been turned to the discussion of general public law. We must go to the continent for the display of genius in this department of human knowledge. What have the Courts of Westminster Hall done to illustrate the principles of public law? With the exception of a tract by Mansfield, of considerable merit, more great principles of public law have been discussed and settled by this Court

<sup>1</sup> *Huber v. Steiner*, 2 Bing. New Cases, 211.

within the last twenty years, than in all the common law Courts of England for the last hundred years. Nay, more important subjects of law have been examined and passed upon by this bench in a series of twenty years, than in all Europe for a century past. And I cannot forbear to add, that one in the midst of you, has favored the world with a treatise on public law, fit to stand by the side of Grotius, to be the companion of the Institutes, a work that is now regarded by the judicature of the world, as the great book of the age,—Story's Conflict of Laws."

The preface to the first edition is as follows :—

"I now submit to the indulgent consideration of the profession and the public, another portion of the labors appertaining to the Dane Professorship of Law in Harvard University. The subject is one of great importance and interest; and from the increasing intercourse between foreign States, as well as between the different States of the American Union, it is daily brought home more and more to the ordinary business and pursuits of human life. The difficulty of treating such a subject in a manner suited to its importance and interest can scarcely be exaggerated. The materials are loose and scattered, and are to be gathered from many sources, not only uninviting, but absolutely repulsive to the mere student of the Common Law. There exists no treatise upon it in the English language; and not the slightest effort has been made, except by Mr. Chancellor Kent, to arrange in any general order even the more familiar maxims of the Common Law in regard to it. Until a comparatively recent period, neither the English Lawyers, nor the English Judges, seem to have had their attention drawn towards it, as a great branch of international jurisprudence, which they were required to administer. And, as far as their researches appear as yet to have gone, they are less profound and satisfactory, than their admirable expositions of municipal law.

“The subject has been discussed with much more fulness, learning, and ability, by the foreign Jurists of Continental Europe. But even among them there exists no systematical Treatise embracing all the general topics. For the most part, they have discussed it only with reference to some few branches of jurisprudence, peculiar to the civil law, or to the customary law (almost infinitely varied) of the neighboring States of Europe, or of the different Provinces of the same Empire. And it must be confessed, that their writings are often of so controversial a character, and abound with so many nice distinctions, (not very intelligible to jurists of the school of the Common Law,) and with so many theories of doubtful utility, that it is not always easy to extract from them such principles, as may afford safe guides to the judgment. Rodenburg, Boullenois, Bouhier, and Froland have written upon it with the most clearness, comprehensiveness, and acuteness. But they rather stimulate than satisfy inquiry; and they are far more elaborate in detecting the errors of others, than in widening and deepening the foundations of the practical doctrines of international jurisprudence. I am not aware, that the works of these eminent jurists have been cited at the English Bar; and I should draw the conclusion, that they are in a great measure, if not altogether, unknown to the studies of Westminster Hall. How it should happen that, in this age, English lawyers should be so utterly indifferent to all foreign jurisprudence, it is not easy to conceive. Many occasions are constantly occurring, in which they would derive essential assistance from it, to illustrate the questions which are brought into contestation in all their Courts.

“In consulting the foreign Jurists, I have felt great embarrassment, as well from my own imperfect knowledge of the jurisprudence, which they profess to discuss, as from the remote analogies, which it sometimes bears to the rights, titles, and remedies recognized in the Common Law. To give their opinions at large upon many topics would fill

volumes; to omit all statements whatever of their opinions, would be to withhold from the reader many most important lights to guide his own studies, and instruct his own judgment. I have adopted an intermediate course; and have laid before the reader such portions of the opinions and reasonings of foreign Jurists, as seemed to me most useful to enable him to understand their doctrines and principles, and to assist him with the means of making more ample researches, if his leisure or his curiosity should invite him to the pursuit. Humble as this task may appear to many minds, it has been attended with a labor truly discouraging and exhausting. I dare not even now indulge the belief, that my success has been at all proportionate to my wishes or my efforts. I feel, however, cheered by the reflection (is it a vain illusion?) that other minds, of more ability, leisure, and learning, may be excited to explore the paths, which I have ventured only to point out. I beg, in conclusion, to address to the candor of the profession my own apology in the language of Strykius:—  
*‘Crescit disputatio nostra sub manibus; unum enim si absolveris jus, plura se offerunt consideranda. At nos temporis, quod nimis breve nobis fit, rationem habentes, accuratius illo inquirere haud possumus. Hinc sufficerit, in presens sparsisse quædem saltem adhuc jura, quidque de iis statuamus, vel obiter dixisse.’*”

The following letter refers to this work:—

TO JAMES JOHN WILKINSON, ESQ.

Cambridge, March 26th, 1834.

MY DEAR SIR:

On my return a day or two since, from my attendance on the annual session of the Supreme Court at Washington, I had the pleasure of receiving the copy of the first and second parts of Mr. Chitty's late work on the Practice of the Law, which you so obligingly sent me. I beg to return you my sincere thanks for this valuable present, and to assure you

that I shall deem it a peculiar gratification to receive it at your hands. As yet, I have had an opportunity merely to glance over its contents; but even this hasty view has satisfied me of its great utility and importance. I have long been familiar with Mr. Chitty's labors, but without in any measure undervaluing the others, I think this may fairly be deemed the most comprehensive for his fame. I am, indeed, quite struck by his untiring industry, at a period of life when most men are disposed to relax their efforts.

I have just published a new work upon a topic of international law, which has not hitherto been systematically examined in England or America. It is upon the operation of the *Lex Loci*, or the Conflict of Foreign and Domestic Laws in matters of contracts, rights, and remedies. I send herewith a copy which I hope you will do me the honor to allow a place in your library. The preparation of the work has cost me a good deal of labor, as many of the materials were to be gathered from foreign Jurists, and foreign Jurisprudence, with which I am not very familiar. But I have endeavored to collect what seemed to me most useful in a condensed form, and hope that I shall not be wholly unsuccessful in rendering the subject attractive to the Jurists of the Common Law.

In America, there are many occasions for applying the principles of the *Lex Loci*. We have already twenty-four States in the Union, in which there are already no inconsiderable diversity, both of laws and of institutions. And in one of them (Louisiana) the Civil Law, the Spanish Law, and the French Law, constitute the basis of its Jurisprudence. One of our recently acquired territories (Florida) inherits the same Jurisprudence. So that the contrasted rights and remedies under the Civil and Common Law, are becoming of not unfrequent occurrence among us. I think, too, that the increased commercial intercourse between the different nations of Europe, is bringing international principles of this sort more and more into daily discussion and



use; so that I trust the work may not be deemed merely theoretical and out of place for common lawyers anywhere.

My judicial duties do not allow me much leisure, but I devote whatever I possess to the steady discharge of my professorial labors. There are at present upwards of fifty law students at our university, and there are yet many subjects belonging to the Dane Professorship which I am required to discuss. I shall be glad to know how far your law lectures in the rival colleges in London have been successful.

Believe me, dear sir,

With very great respect, truly yours,

JOSEPH STORY.

Among other letters received by my father, upon the publication of the first edition of this work, the following are interesting:—

New York, April 11th, 1834.

MY DEAR SIR:

I was in hopes of seeing you on your return from Washington, but I despair now of ever having that pleasure, unless I should be led to visit Cambridge. In your transit to the South you hurry from wharf to wharf, because you have allowed the least time possible to reach Washington by the time the Court opens; and upon your return, the thoughts of home (and no wonder, and here I can sympathize with you and forgive you,) impel you through town as if the mob of the 6th Ward were at your heels. But at any rate, I can reach you with my pen.

There would be plenty of matter for us to chat about if we were together. I have now read and studied thoroughly your admirable Commentary on the Conflict of Laws. You are, as usual, full and perfect in every part, and have left no collateral, as well as no direct point unexamined. . . . You have interested and delighted me exceedingly, and I have perceived and felt the want of precision in every in-

stance in which you have intimated it, and have endeavored to correct my own passages. I say there is no such book extant in any single branch of the Law, so full and clear and perfect; and there was no head of the Law which stood more in need of such a production, giving us all the principles and reasoning of all the great Jurists of Europe on the subject. . . .

Believe me, truly and affectionately yours,

JAMES KENT.

TO HON. JOSEPH STORY.

Philadelphia, April 30th, 1834.

MY DEAR SIR:

I have just received the copy you have been good enough to send me of your new work on the Conflict of Laws, and valuable as it is, that value is greatly enhanced, in my estimation, by the inscription on the blank leaf, "from his friend, the author."

You must not suppose, my dear Sir, that I have let so much time pass without reading this truly curious and instructive volume. I laid my hands on it soon after my return from Washington, and I assure you I have derived more new knowledge from it than from any book I have seen for a long time. A great part of it is absolutely new to me, and the various important doctrines and principles it treats of are so finely developed, and so clearly explained, with so little mystification, that the plainest understanding comprehends it with as much facility as the most learned. . . .

But I say again and again to you, you work too hard. Take care of your health. You have done enough for your fame. Attend to your body.

Very truly and respectfully,

Your servant,

JOS. HOPKINSON.

TO HON. JOSEPH STORY.

26 May, 1834.

MY DEAR SIR:

I had the pleasure of receiving a few days since your valuable present of the *Commentaries on the Conflict of Laws*, for which, and for the highly gratifying letter by which it was accompanied, I beg you to accept my best and warmest thanks. We have, as you well know, no work of a similar character in England, and what is still more to be lamented, we have no one capable of producing such a work. In the course of the long vacation, I hope to make myself acquainted with its contents. . . .

Your faithful and obliged friend,

HENRY ROSCOE.

The next letter is from Mons. Fœlix, the accomplished editor of the *Revue Étrangère*, published at Paris.

TO HON. JOSEPH STORY.

Paris, le 17 Octobre, 1834.

MONSIEUR:

Permettez qu'un étranger vous témoigne toute la satisfaction qu'il à éprouvée à la lecture de vos *Commentaries of the Conflict of Laws*. Depuis longtemps les matières que vous y traitez ont fait l'objet de mes méditations et de mes recherches, et je me proposais de publier un travail à peu près analogue au votre. Ayant eu connaissance de ce dernier par un article de l'*American Jurist and Law Magazine*, je le fis venir de Londres, et, je dois le dire, cet ouvrage n'a pas seulement satisfait à mon attente, mais il l'a surpassée. Vous avez réduit la matière à des principes plus simples et plus justes que ne l'avaient fait vos devanciers. Vous avez mis à profit presque tous les auteurs Européens qui ont écrit sur la matière, rapproché leurs opinions, et examiné à fond toutes les questions. Je viens de publier dans la *Revue Étrangère de Législation et d'Economie politique*, dont je suis l'éditeur, un article

sur votre ouvrage, afin d'en faire également jouir mes compatriotes Européens : les relations scientifiques ne sont pas encore suffisamment établies entre les deux mondes pour que l'on connaisse dans l'un les productions littéraires de l'autre, et j'ai cru de mon devoir d'y contribuer à l'égard d'un ouvrage d'une si éminente utilité que le votre. Je joins à la présente le cahier qui contient cet article, ainsi qu'un prospectus de notre publication. Oserais-je, Monsieur, vous prier, d'associer votre nom à ceux des collaborateurs de la *Revue Étrangère* parmi lesquels vous trouverez des hommes distingués de toutes les parties de l'Europe. Nous recevrons comme un véritable service un article quelconque que vous voudrez bien nous faire passer sur un point quelconque de l'organisation judiciaire ou de la législation de l'un ou l'autre des États-Unis.

Agréez, Monsieur, l'assurance de la haute considération avec laquelle j'ai l'honneur d'être,

Votre très humble et très obeissant serviteur,

FÉLIX.

During the next year, and after a more thorough perusal of this work, Mons. Fœlix, in a letter dated April 17th, 1835, says, —

“En lisant votre ouvrage du ‘Conflict of Laws’ je me suis étonné du nombre des auteurs Européens dont vous avez fait usage ; une grande partie d’entre eux sont mêmes rares sur le Continent.”

The following extract from a letter by J. Ferguson, Esq., the late eminent Judge of the Consistorial Court of Scotland, and the author of a work on divorce, contains a warm recognition of the value of these Commentaries on the Conflict of Laws : —

“I have repeatedly and deliberately gone through the whole work of Mr. Justice Story, which I deem the most comprehen-

sive and candid in our language relating to that department of the law administered so long by the Consistory Court at Edinburgh, and the Court of Session, as the Grand Consistory of this kingdom. No jurist can peruse it without admiration of the industry, candor, and learning with which it is composed.

“If you can attract the attention certainly merited to this work, it must be useful in dispelling prejudices and exciting imitation. For it supplies valuable information, supported by a greater body of authorities, both in opinions of the most eminent jurists and in decisions of consistorial judications, than I have before seen collected in one volume.”

In August, 1834, my father published in the *New England Magazine*, an essay, entitled “*Statesmen: their Rareness and Importance*,” in the course of which, he gives a sketch of the political career of the Hon. Daniel Webster. The following striking passage occurs in this paper:—

“Consistency is, doubtless, a quality of no inconsiderable value, as a test of character, and often rises into a high virtue. He, who is ever veering about with every wind of doctrine and opinion, is possessed of feeble judgment, or feeble principles, or both. He wants constancy or clearness of mind, and may often be open to the stronger reproach of a deficiency of morals. As a guide or an example, he is equally unsafe; and it is difficult to say, whether he does most injury as a friend or a foe, as a supporter or as an opponent of government. But consistency of character and consistency of opinion are not necessarily identical. Never to change an opinion, would be as remarkable, nay, as unworthy, in a wise man, as never to be stable in any opinion. Inflexibility in maintaining opinions once taken up, whatever may be the change of circumstances, and without regard to them, degenerates into mischievous obstinacy and wrong-headed persever-

ance. It would be strange, if a man should never profit by his own experience, or by that of others ; that he should learn nothing, and forget nothing ; that, at twenty, he should be as ripe and correct as at forty. And, to bring the case home, that when he begins political life, he should be so wise, that there should be nothing to learn, and that, in the most complex and difficult of all human transactions, the constant permutations and new combinations of society should introduce no new elements of opinion or action. The statement of such a case carries its own refutation along with it. Human wisdom is the aggregate of all human experience, constantly accumulating, and selecting, and re-organizing its own materials."

The following letter from Chief Justice Marshall, relates to this essay : —

TO HON. JOSEPH STORY.

Richmond, October 6th, 1834.

MY DEAR SIR :

On my return a day or two past from an annual visit to our mountains, I had the real gratification of receiving a number of the *New England Magazine* for August last, containing an essay, entitled "*Statesmen : their Rareness and Importance*," forwarded to me by yourself, and thank you truly for the real pleasure afforded by its perusal.

The justness and solidity of its sentiments, the distinguished individual who is selected as an example of the real statesman, and the kind notice taken of an old friend who is under so many obligations to you, designate the author as certainly as if his name had been affixed to the work.

It is in vain to lament, that the portrait which the author has drawn of our political and party men, is, in the general, true. Lament it as we may, much as it may wound our vanity or our pride, it is still, in the main, true ; and will, I fear, so remain.

. . . In the South, political prejudice is too strong to

yield to any degree of merit ; and the great body of the nation contains, at least appears to me to contain, too much of the same ingredient. To men who think as you and I do, the present is gloomy enough ; and the future presents no cheering prospect. The struggle now maintained in every State in the Union seems to me to be of doubtful issue ; but should it terminate contrary to the wishes of those who support the enormous pretensions of the Executive, should victory crown the exertions of the champions of constitutional law, what serious and lasting advantage is to be expected from this result ? In the South (things may be less gloomy with you) those who support the Executive do not support the Government. They sustain the personal power of the President, but labor incessantly to impair the legitimate powers of the Government. Those who oppose the violent and rash measures of the Executive (many of them nullifiers, many of them seceders,) are generally the bitter enemies of a constitutional government. Many of them are the avowed advocates of a league ; and those who do not go the whole length, go great part of the way. What can we hope for in such circumstances ? As far as I can judge, the Government is weakened, whatever party may prevail. Such is the impression I receive from the language of those around me.

Before leaving Richmond I had finished your treatise on "The Conflict of Laws," and am much pleased with it. I was a good deal surprised at the diversity of opinion among writers on the general law of Continental Europe. I was surprised to find that there were still more doubtful questions growing out of the civil than out of the common law. I wonder, too, how you ever have performed so laborious a task. You certainly love work for its own sake. . . .

With us the natural atmosphere has been as stormy, as tempestuous, and in all respects as extraordinary as the political. Yet, I remain in good health, and as usual,

Your faithful friend,

J. MARSHALL.

The next letter, with the accompanying remarks, was in answer to a letter from Mr. Bancroft, asking my father's views upon the question, whether by the charter of the Massachusetts Colony in 1628, freedom of religious worship was guaranteed.

TO GEORGE BANCROFT, ESQ.

Cambridge, April 26th, 1834.

DEAR SIR :

The substance of the following remarks was put on paper as soon after I had the pleasure of your letter as I could obtain Chalmers and Hazard. But my engagements have prevented me from giving them this precise form until the present time. If they are of any use to you, I shall be truly gratified.

Believe me, very truly yours,

JOSEPH STORY.

REMARKS.

Chalmers (Annals, 141) is certainly right in saying that the charter of 1628 did not spontaneously grant to the colonists the freedom of religious worship. He is inaccurate in stating that the charter *required* the oath of supremacy to be administered to emigrants to the colony. It only *authorized* such an oath to be administered.

Dr. Robertson's language (Hist. of America, b. 10,) is not quite open to the same objection. He is right in suggesting that the King by that charter did not hold out any hopes of indulgence with respect to their religious scruples, and the charter certainly does provide (though it does not require) the oath of supremacy to be administered.

Grahame, (vol. i. 244, 245,) who in this respect follows Neal, (Hist. of N. Eng. i. 124; Hist. Purit. ii. 210,) insists that the charter did bestow upon the grantees and emigrants the amplest liberty to regulate their worship by the dictates



of their own conscience, and he endeavors to support this opinion by reasons, in a juridical view, wholly unsatisfactory. My reasons for so saying, are these :

1. There is not a single clause in the charter which in the slightest manner alludes to, or confers the privilege of freedom of worship ; nor can it be implied by any reasonable construction from any clause in the charter. The general rule of law is, that royal grants are not to be enlarged by implication ; and there is no pretence to say that the silence of a charter upon a subject gives by implication any privilege or right which its own terms do not convey on that subject. The charters of municipal corporations (and the colony charter created a municipal corporation) never are construed to confer any privileges but those which are expressed, or which arise by necessity from those which are expressed. How can any one pretend, that a single clause in the charter required by necessary implication religious freedom for its execution ? If there had been an express prohibition of that freedom, every power was in its nature equally capable of just execution. In the subsequent colonial charters, where religious freedom was intended, it was expressly provided for. It would, therefore, in a legal view, be sufficient to say that the omission to guarantee religious freedom, left it unprovided for and unprotected.

2. The laws of England at the time of the grant of the charter, and for ages before, denied any religious freedom to its subjects. These laws were in force as to all subjects of the realm, whether they were in the realm or in the colonies, unless some special exemption was given. They were in their nature applicable to colonies, as well as to the mother country. The charter confers on the colonists the rights and privileges of subjects, but it does not confer on them greater rights and privileges than subjects possessed. Unless, then, there was some dispensation in regard to the laws of non-conformity, in favor of the colonists, those laws bound them. Who, that knows the arbitrary maxims and intolerant princi-

ples of that age, can for a moment believe that Charles I. would confer a privilege upon the colonists in violation of the laws of non-conformity? What Dr. Robertson says on this subject, in his note, is to my mind irresistible, (as to moral probabilities,) if we were driven (as we are not) to consider them.

3. The charter not only does not confer the privilege of religious freedom, but there is negative proof that it was never so intended. Religious freedom could not be conferred, unless by some colonial ordinances and laws. Now, the colonial authorities were not authorized to make any ordinances or laws inconsistent with those of England. On the contrary, the express restriction is, "so that such laws and ordinances be not contrary or repugnant to the laws and statutes of this our Realm of England." Here, then, is an express prohibition to pass any laws repugnant to those of England, on the subject of non-conformity. Where, then, is the ground of asserting the right to provide for religious freedom? How could the colonial authorities, under such a charter, establish a new form of church government, unknown to, and unsanctioned by the laws of England.

4. I go further and say, that the colonists never themselves contemplated the establishment of a general freedom of religious worship. They were quite as far from sanctioning the toleration of differences of religious opinion, as the Church of England or the King. The oath of supremacy was not aimed against dissenters, but against Papists. The dissenters never (that I remember) complained of that oath. They hated the hierarchy of Rome with as much intensity as any churchman of the Episcopal establishment. The whole history of the oath of supremacy shows that its sole object and application were against Papists. The power, therefore, to administer the oath of supremacy was equally as acceptable to the colonists as to the crown, since it gratified both by enabling them to exclude Papists from the Colony. It demonstrates, also, that universal religious toleration was never

dreamed of by either. That oath was authorized to be administered not only to subjects (for that could always be done) but to strangers desirous of becoming subjects and colonists, and the oath of allegiance was in regard to the latter (strangers) indispensable to establish that they were desirous of becoming subjects of the crown. It was the proper test of allegiance. The oath of supremacy seems to me to have had no bearing on the Puritans, either as a restraint upon, or an enlargement of, the religious privileges of the Puritans. The charter of 1620, to the Council of Plymouth, shows, that the sole object of the oath of supremacy which that charter authorized the President of the Council to administer, was to exclude Papists. I do not doubt that the clause of the charter of 1628 was taken from it.

The language of 1 Story's Commentaries, 49, so far as it states that the monarch insisted upon "an administration of the oath of supremacy to any person who should inhabit the colony," is inaccurate. He did not insist, but simply empowered. But in all other respects, I adhere to the doctrines contained in the paragraph, (§ 64,) and I wholly dissent from Grahame's notions. It is to me of no consequence that the Puritans always acted upon a different construction. They disregarded the charter in all other respects in which they did not find it convenient. Where did they get the authority to remove the charter to Massachusetts, and to exercise all its powers there?

The view suggested by my father was followed by Mr. Bancroft in his History of the United States; and in a note to his History, (vol. i. p. 373, 1st edit.) says, "I have written with confidence, because I have been favored with an ample, and, to my mind, a conclusive opinion on the subject from the author of the Commentaries on the Constitution of the United States; whose opinions derive their weight less from his eminent sta-

tion than from his profound learning and genius. The European who would understand our form of Government, must study the Commentaries of Story."

A proof sheet of the passage relating to this matter, which was sent to my father, elicited the following answer: —

TO GEORGE BANCROFT, ESQ.

Cambridge, May 15th, 1834.

MY DEAR SIR:

I have had the pleasure of receiving your letter, and the accompanying proof sheets. It is with no small interest, that I have perused them. The text of your most important historical work appears to me to stand clearly and critically right throughout. It agrees entirely with my own views of the facts, and I can perceive nothing to be corrected or altered. Allow me to add, that, judging from this specimen, (which I dare say is consonant with the general structure of your text) I think your work will be very interesting and useful. You have infused into it a very spirited, chaste, and vigorous narrative, and your brief but striking notes are at once satisfactory and illustrative. I am a great friend to running commentaries of this sort.

Believe me very truly and respectfully,

Your obliged friend,

JOSEPH STORY.

Upon the publication of the first volume of this work, my father thus expresses his opinion of its merit: —

TO GEORGE BANCROFT, ESQ.

Cambridge, November 15th, 1834.

DEAR SIR:

Your first volume of American History meets general praise; and I can personally congratulate you upon its suc-

cess. It is full of interesting matter, and has a vividness and force of style and reflection, which give it a wide reputation. *Sic itur ad astra.*

Believe me very truly,

Your obliged friend,

JOSEPH STORY.

Constant and laborious occupation had now become a habit with my father, and, like all other fixed habits, was tyrannical. He was restless when not at work; and even though his labors tasked him to the utmost, he preferred exhaustion to leisure. The moment that the *Conflict of Laws* was published, he betook himself to the preparation of his work on *Equity Jurisprudence*. But too assiduous labor had begun to wear upon his health, and he determined (or thought he determined) to take more time for the accomplishment of this new project. How wide of the mark were his views of the difficulties of this undertaking, will incidentally appear from a passage in the following correspondence between him and Chancellor Kent, in which he anticipates that it will occupy only a volume of four or five hundred pages, which is less than one third of its actual size.

TO HON. JOSEPH STORY.

New York, May 15th, 1834.

MY DEAR SIR:

The New York Law Institute held their annual anniversary yesterday, and celebrated it by a public dinner, at which were one hundred and fifty members of our bar, and judicial and juridical guests. I was one of the number, and among a great number of toasts, almost all of a professional cast, one of the guests being called on for a toast, gave the following, and introduced it with remarks, nearly as I can recollect,

of the following purport, and as you always take an interest in law concerns, I have taken the liberty to note them down.

I am most sincerely, your

Friend and devoted servant,

JAMES KENT.

“I submit the name of a gentleman, who has largely contributed to elevate the judicial character of the Courts of the United States; and who recently, as a Collegiate Professor, has instructed and delighted us all by the erudition and skill with which he has explained the History and Principles of the Constitution of this country, as well as illuminated the paths of our profession.

“We have long been accustomed to receive with diffidence and submission the authority of Westminster Hall, and especially to contemplate with wonder, if not with despair, the massy piles of Gothic lore and court-law learning accumulated by the civilians of Europe. But some of the treatises as well as decisions of the gentleman to whom I have alluded, are well calculated to teach our trans-Atlantic teachers. They are monuments of industry as indefatigable, of researches as exhausting, of penetration equally profound, and of deductions still more clearly and accurately drawn.

“It is gratifying to behold so much diligence and learning sustained by a solid and comprehensive understanding; guided by a vigorous and severe judgment; enforced by masculine eloquence, adorned by classical taste, and accompanied with liberal views, purity of heart, integrity of conduct, an ardent attachment to the institutions of our country, and a generous and almost chivalric devotion to the honor and dignity of the science of jurisprudence.

“I give you the name of MR. JUSTICE STORY.”

TO HON. JAMES KENT.

Cambridge, May 17th, 1834.

MY DEAR SIR:

I should long since have thanked you for your letter giving me the result of your perusal of my work on the Conflict of Laws, if, about the time of receiving it, a severe illness of my only son had not absorbed all my thoughts, and if since his recovery, I had not been *in transitu* on my circuits. I am now to thank you for your much later letter which I received yesterday, and of which the contents could not but be most interesting and gratifying to me. I believe that you will not suspect me of wanting the usual shrewdness of a Yankee in guessing who the kind friend was, who so warmly and flatteringly introduced me before the Law Institute of New York by a toast which, coming from the source it did, and accompanied as it was with a commentary as characteristic as it was eloquent, was all I could desire, and far more than I could feel I deserved. I know well, that much of the kind reception of a guest among strangers depends upon his introduction, and I feel deeply how much I owe to you on this occasion, for being remembered as of the law and for the law.

I must now turn to another topic, and that is, your opinion of my late work, of which I may say, that I feel truly proud, and the more so because I know that you are one of the few who can duly appreciate the labor and the difficulties of the task; and not to have wholly failed, is a motive with me for more vigorous exertions hereafter. . . .

My next work will be a Treatise on Equity Jurisprudence, in which I shall borrow freely from your labors. This work I shall take more leisurely, as I fear that I may somewhat impair my health by too vigorous study. It will be purely elementary as to principles and practice, and will probably

occupy a volume of four hundred or five hundred pages. I shall follow your example of ascending to the sources.

I am sorry for the controversy between Mr. Wheaton and Peters, and did all I could to prevent a public discussion of the delicate subject of copyright, in which we all have so deep an interest. The opinion of the Court as to the point of the Common Law right of copyright, is founded, (at least in the judgment of Mr. Chief Justice Marshall and myself,) upon the same reasoning as that of Mr. Justice Yates, in *Burrow's Reports*; an argument, which we think is unanswerable, or that has not as yet been answered. The strict construction of the statute of Congress we adopted with vast reluctance, but after turning it fully and freely in our minds, the majority of the court did not see how they could give any other construction to it. I wish Congress would make some additional provisions on the subject, to protect authors, of whom I think no one more meritorious than Mr. Wheaton. You, as a Judge, have frequently had occasion to know how many bitter cups we are not at liberty to pass by.

Believe me most truly and affectionately yours, adding only that your views of politics and men run exactly in the same mould as mine.

JOSEPH STORY.

The case alluded to in this last letter is *Wheaton v. Peters*, (8 Peters's R. 591,) in which it was held, among other things, that an author has no copyright by the Common Law, but only by the statute.

During this year the death of Mr. Justice Johnson occasioned a vacancy in the Supreme Court of the United States, which was supplied in the succeeding year by the appointment of Mr. Wayne. In consequence of the infirmities of age, Mr. Justice Duvall also resigned his position on the Bench in the early part of



the succeeding January, and Mr. Taney was nominated to supply the vacancy. This nomination was not however acted upon, in consequence of a new arrangement of the judicial system as to the circuits, until the next year, when, upon the death of Chief Justice Marshall, Mr. Taney was appointed to fill his place.

In August, 1834, at the request of the American Institute of Instruction, my father delivered a lecture before this Society, on "The Science of Government as a branch of Popular Education." The tone of this discourse is conservative. It commences with some general considerations upon government, which he calls a "science of adaptations, variable in its elements, dependent upon circumstances, and incapable of a rigid mathematical demonstration." It then proceeds to oppose two ideas, one of which is concisely expressed in Pope's couplet, —

"For forms of government let fools contest,  
That which is best administered is best; "

and the other, which he maintains to be quite as mischievous, is that government is a matter of simplicity. "If," he says, "there be any truth, which a large survey of human experience justifies us in asserting, it is, that in proportion as a government is free, it must be complicated. Simplicity belongs only to those where one will governs all; where few arrangements are required, because no checks to power are allowed; where law is not a science, but a mandate, to be followed and not to be discussed; where it is not a rule for permanent action, but a capricious and arbitrary dictate of the hour." In this country, as the most complicated form

of government has been selected, and one in which all guards against danger or ruin are dispensed with, except the intelligence and virtue of the people, he argues that it here becomes peculiarly the duty not only of the statesman but of every citizen, to make its principles and operation a subject of study; and in this connection he speaks of the peculiar dangers to which a republican government is exposed. He then proceeds to set forth the practicability, as well as the propriety, of teaching the science of government as a branch of popular education, and thereby preparing the way for such an understanding of its general principles as to secure intelligent legislation; insisting that though a thorough mastering of this subject requires a whole life of laborious diligence, and can be attained only by the highest class of minds, yet that the general principles of the Constitution of the United States, and the appropriate functions of the various departments may be easily taught and comprehended.

“I am not aware,” he says, “that there are any solid objections, which can be urged against introducing the science of government into our common schools, as a branch of popular education. If it should be said, that it is too deep and difficult for the studies of youth, that objection assumes the very matter in controversy; and, if the observations already made are well founded, it is wholly indefensible. If it should be said, that it will have a tendency to introduce party creeds and party dogmas into our schools, the true answer is, that the principles of government should be there taught, and not the creeds or dogmas of any party. The principles of the Constitution, under which we live; the principles, upon which republics generally are founded, by which they are sustained, and through which they must be saved; the prin-

ciples of public policy, by which national prosperity is secured, and national ruin averted; these, certainly, are not party creeds, or party dogmas; but are fit to be taught at all times and on all occasions, if any thing, which belongs to human life and our own condition, is fit to be taught. If we wait, until we can guard ourselves against every possible chance of abuse, before we introduce any system of instruction, we shall wait until the current of time has flowed into the ocean of eternity. There is nothing, which ever has been, or ever can be taught, without some chance of abuse, nay, without some absolute abuse. Even religion itself, our truest and our only lasting hope and consolation, has not escaped the common infirmity of our nature. If it never had been taught, until it could be taught with the purity, simplicity, and energy of the apostolic age, we ourselves, instead of being blest with the bright and balmy influences of Christianity, should now have been groping our way in the darkness of heathenism, or left to perish in the cold and cheerless labyrinths of skepticism.

“If it be said, that there is not time, or means, suitable to learn these principles in our common schools, the true answer is, that, if the fact be so, (which is not admitted) more time should be given, and more ample means be supplied, for the purpose. What is the business of education, but to fit men to accomplish their duties and their destiny? And who is there among Americans, that is not called to the constant performance of political duties, and the exercise of political privileges? He may perform, or use them, well or ill. But the results of the use and abuse are, and ever will be, mixed up with his own intimate interests. The perils, he may choose that others shall encounter, he must share in common with them. He is embarked in the same ship of state, and the shipwreck, which shall bury the hopes of others, will not spare his own. What blessings in human life can fairly be put in competition with those derived from good government and free institutions? What condition can be more deplor-

able than that, where labor has no reward, property no security, and domestic life no tranquillity? where the slave is compelled to kiss the chain, which binds him to wretchedness, and smile upon his oppressor, while his heart is writhing in agony? Let not Americans forget, that Greece, immortal Greece, has been free; and yet, thousands of years have already rolled over her servitude; that Italy, beautiful Italy, has been free; but where is now her republican grandeur? The Apennines still lift up their bold and rugged peaks; the sun still looks down upon her plains with a warm and cloudless splendor;—but the spirit of liberty is not there; and Rome has become, as it were, the vast sepulchre of her own perished glory.

“But, independent of the grave considerations, already urged, in favor of the introduction of political studies into our system of popular education, there are other collateral advantages, which should not be wholly passed by.

“In the first place, there are no studies better fitted to discipline the mind, or to accustom it to severe and close investigation. They combine, in a very high degree, the speculations of philosophy with the varied events of history, and increase the separate interest of each. They have a tendency to enlarge and liberalize the mind, by familiarizing it with comprehensive views of men and things. They are capable of an indefinite expansion and variety, such as may employ the whole leisure of the most retired scholar, or suit the short and hasty intervals of the man of business. They gather up new materials in the daily intercourse of society; and, at the same time, they enable us to expound its apparent anomalies, and classify its varied results.

“In the next place, they have a powerful tendency to counteract the rash and hasty judgments, which youth and inexperience naturally produce in ardent and inquisitive minds. Nothing is so fascinating, and so delusive, as the simplicity of theory, in the earlier stages of life. It not only flatters that pride of opinion, which results from a supposed mastery

of important truths; but it gratifies that fresh and vigorous confidence, which hopeth all things, and believeth all things. The severe lessons of experience do, indeed, generally, correct, or demolish these visionary notions. But they often come so slow, that irreparable mistakes have been already committed; and the party is left to mourn over the blight of his own prospects, or the impending dangers to his country. Nothing can have a more salutary effect in repressing this undue pride and confidence than the study of the science of Government. The youth is there taught, how little reliance can be placed upon mere abstract speculations; how often that, which is theoretically true, becomes practically mischievous; how complicated is the machinery, necessary to carry on the operations of a good Government; how many nice adjustments are required, to give full play and activity to the system; how slow every change must be, to be safe, as well as improving; and, above all, how often the wisest statesmen, the truest patriots, and the most profound reasoners, find defects, where they had least suspected them; and their labors, begun with energy and confidence, end in disappointment and mortification. Nay, systems of Government, which have been apparently reared with consummate skill and solidity, have often been found buried in ruins, before the capstone has been placed upon them; and, while the architect has been still gazing on his own work, he has become the first victim of its ponderous magnificence.

“Considerations of this sort cannot wholly escape an ingenuous youth, upon the most cursory examination of Government, as it is read by the lights of history. They will naturally inspire caution, if they do not awaken distrust; and when, at every step of his advancement in political studies, he finds himself compelled to surrender some imagined truth, to discredit some popular dogma, and to doubt some plausible theory, he cannot but profit by the instructions which they hold out, and the admonitions which they silently inculcate. A nation, whose citizens are habitually attentive

to the principles and workings of Government, may sometimes be betrayed; but it can scarcely be ruined. At least, it cannot be enslaved, until it has sunk so low in corruption, that it will hail the presence of any tyrant, to escape from the terrible scourges of anarchy.

“But it may be asked, and this is the last topic, on which I propose to address you: In what mode is the science of Government to be taught in our common schools? The answer may be given in a few words. It is by the introduction and constant use of suitable elementary works, which unfold the principles of Government, and illustrate their application, and in an especial manner, with reference to the forms of the American Constitutions. Such works should not only be read, but be studied as class-books. The instructor, if he possess common skill and ingenuity, may easily make them, not a dry task, but an interesting exercise. By bringing constantly before the school, in the course of reading, and recitation, and occasional explanations, the leading principles of Government, he will gradually make the pupils familiar with their bearing and value. They may not at once arrive at the various truths, which are designed to be taught; but they will silently master them. And by the time they have passed through the usual preparatory studies of the school, they will have acquired a stock of materials for future use, of inestimable value—a stock, which will furnish perpetual sources for meditation, and enable them to lay a broad foundation for the due discharge of the duties of private citizens, and the more arduous employments of public life. . . .

“I shall conclude this discourse with a single sentence, borrowed from the great work of Cicero on the Republic, the most mature, and not least important, of his splendid labors—a sentence, which should always be present to the mind of every American citizen, as a guide and incentive to duty. ‘Our country,’ said that great man, ‘has not given us birth, or educated us under her law, as if she expected no

succor from us ; or, that, seeking to administer to our convenience only, she might afford a safe retreat for the indulgence of our ease, or a peaceful asylum for our indolence ; but that she might hold in pledge the various and most exalted powers of our mind, our genius, and our judgment, for her own benefit ; and that she might leave for our private use such portions only, as might be spared for that purpose."

It was with these views, that my father subsequently prepared a little book for the use of schools, called "The Constitutional Class Book," in which the principles of our government are familiarly and agreeably explained, and which was published in "The School Library," and introduced as a text-book into various schools.

In consequence of the increased growth of the Law School, as well as for other considerations, Charles Sumner, Esq., took charge of some of the departments in the Law School during my father's absence at Washington, in the winter of 1835, (as well as during the two succeeding years,) and lectured to the students. The following letter, alluding to this fact, is expressive of the affection and esteem of my father for his friend :—

TO CHARLES SUMNER, ESQ.

Washington, February 9th, 1835.

MY DEAR SIR :

I rejoice that you have gone through the ordeal of your inauguration, and fairly through, and are now acclimated in the Law School. I never had any doubt upon the subject. Your success (for so I learn from Mr. Greenleaf) has been complete, and every way gratifying. I hope this is but the beginning, and that one day you may fill the chair which he or I occupy, if he or I, like autocrats, can hope to appoint our successor.

As to your questions, I say, (1) a neutral may lawfully sell ammunition to a belligerent. It is treated practically (not that theoretically it is right) as a rightful act of the neutral giving a right to the belligerent to capture and condemn. It is a conflict of rights, in which each party may struggle for victory. I wish the rule were otherwise, as it is in sound morals. (2) The like answer governs the second question. It is lawful to sell to a merchant vessel, and for her so to do. Still, it is an act contraband of war, and therefore the merchant vessel may be seized and condemned therefor by the antagonist belligerent. But you are to understand that there is this qualification to both principles, that it must be the case of a neutral selling ammunition to a belligerent; not a belligerent selling to his country's enemy.

· · · · ·  
Your affectionate friend,

JOSEPH STORY.

At this time, the health of Chief Justice Marshall began visibly to fail, and my father saw, with great gloom, that he was soon to lose one of his oldest and dearest friends. From the moment that he had taken his seat on the Bench, there had been a reciprocal respect and affection between him and the Chief Justice. On constitutional questions their views had been similar, and they had labored together in upholding the same doctrines. My father's feeling for him fell little short of reverence, and he looked forward to his death with gloomy forebodings, as an irreparable loss to himself personally, and as removing one great pillar from the support of the Constitution. Of all the Judges who had constituted the Court when my father first came to the Bench, the Chief Justice alone remained. One after another his early friends and associates had passed



away, and his affections and prejudices were with the past. It was in this spirit that some of the following letters were written,—the first of which was addressed to Miss Martineau, during her journey through the United States.

## TO MISS MARTINEAU.

Washington, February 14th, 1835.

MY DEAR MISS MARTINEAU :

I have consulted the Chief Justice respecting your route. He says that from Alexandria to Fredericksburg is about fifty-two miles, and from Fredericksburg to Mr. Madison's about sixty miles. There is a stage coach leaves Fredericksburg for Orange county, which passes near Mr. Madison's. But how often it goes, and the days on which it goes, he does not know. He says that if the present frost continues, you will not find the roads bad, and that you will arrive at Fredericksburg by early evening.

So much for business; and now I must tell you (what gratified me exceedingly) that the Chief Justice asked me if I thought a letter from him, like that which I told him I wrote for you, would be acceptable to you and Miss Jeffery. (I have it right at last.) I did not hesitate to say that it would; and he replied that it would afford him great pleasure to give it. His offer was purely his own suggestion, and as such should be viewed by you. The letter accompanies this. He could give no better proof how highly he esteems you. When I tell you that he is one of the greatest minds which America has produced, and is equally distinguished for his purity, his sterling integrity, his patriotism, his warm affections, his benevolence, and his undying veneration and enthusiasm for your sex, you will not fail to appreciate my feelings in regard to this compliment to you. There is no one on earth whose friendship I value more than his; there is no one whose praise is to me so touching and so dear. Pray keep

his letter; it is the memorial of a man of eighty, still in the full possession of his glorious mind, and whose death, whenever it may happen, will cause a sensation in America, unequalled except by that of Washington.

You know not how much you delighted me last night by your sketches of your life and pursuits; your calamities and your noble triumph over them. I pray God to preserve you many years as a blessing to your country and to the world. Never forget that there are thousands of bosoms in America which will beat high whenever your voice speaks to them from the other side of the Atlantic. . . .

I hope to see you to-morrow to bid you good-bye, but if I should not be able to do so, from any unexpected circumstances, pray remember that I now say, in the simplicity of phrase of the olden time, to Miss Jeffery and you, God speed!

Very truly yours,

JOSEPH STORY.

TO HON. JUDGE FAY.

Washington, March 2d, 1835.

MY DEAR FRIEND:

(For so it is pleasant to call one whom I have known so long and so well) — I have not written to you before, because there has been nothing passing in this strange city worth relating. Nevertheless, as I wish to stand acquitted of all supposed neglect, I take this clear cold morning to write to you.

The state of public affairs is any thing but satisfactory. The President is exceedingly warm for a war with France, if he could get Congress to back him. The Senate, (in these times our sole security) it is well known, would steadily resist him. But the House would be as pliant and supple as he could wish. Nothing is more extraordinary than the fact that the House of Representatives, so often lauded as the true protector of the rights and interests of the people, is ready, under the strong bonds of party union and executive patron-

age, to yield up both. The duration of their office is too short to secure independence of action, and the elections are too much under the power of mere demagogues. Hence the gradual change of public men, from a lofty firmness to a temporizing policy. . . .

You will be surprised at the credulity and extravagance of the President about the Poindexter affair, and the assassination intended by Lawrence. The report of the Senate on the subject was unanimously agreed to by the committee, and shows the whole charge against Poindexter to be (what every man of sense knew it must be) utterly without foundation.

We are approaching the close of the session of the Court, and have not had any very interesting business before us, though the arguments have been long and intricate; but we have now a case from Florida, involving a claim for one million two hundred and fifty thousand acres of land, which has been under argument eight days, and will probably occupy five more. Yet I firmly believe that it ought not to have occupied one third of the time, to have developed all the merits. But this is the very region of words; and Americans, I fear, have a natural propensity to substitute them for things.

Chief Justice Marshall still possesses his intellectual powers in very high vigor. But his physical strength is manifestly on the decline; and it is now obvious, that after a year or two, he will resign, from the pressing infirmities of age. Of course this is mere conjecture, and I should not choose to say so to any one abroad. What a gloom will spread over the nation when he is gone! His place will not, nay, it cannot be supplied.

Good-bye. Give my love to your wife, and believe me,  
Most truly and affectionately yours,

JOSEPH STORY.

TO RICHARD PETERS, ESQ.

Cambridge, May 20th, 1835.

MY DEAR SIR:

. . . . The sixth volume of Mr. Mason's Reports is now in press; but in consequence of his various engagements, (having the care of several estates,) he has concluded to relinquish the volume to our friend Mr. Sumner, by whom it will be immediately published, and you shall have the sheets as they are printed. The volume will constitute the first volume of "Sumner's Reports." I wish you to prepare your Digest; it will be a most valuable addition to our libraries. And I am anxious that you should not rely upon any existing Digest, but make it by reading and marking with a pencil all the important *dicta* and principles yourself, and then examine the Digests of other persons, to see if aught is omitted; it will make a very stout volume.

I have not written to the Chief Justice on the subject of his health. I know and have long known all his complaints, their nature and character; I have therefore the deepest solicitude when I hear that he is more indisposed than usual. Yet I fear to appear to him too solicitous on the subject, lest it should give him uneasiness, and perhaps precipitate his quitting the Bench. His health is visibly declining, but his mind remains perfect. I pray God that he may long live to bless his country; but I confess that I have many fears whether he can be long with us. His complaints are, I am sure, incurable, but I suppose that they may be alleviated, unless he should meet with some accidental cold or injury to aggravate them. Of these, he is in perpetual danger, from his imprudence as well as from the natural effects of age.

The Baltimore Convention has not produced much sensation here. Whether it has elsewhere I do not know. For myself, I look to the future with diminished hope and sub-

duced confidence. I fear that my country cannot be forewarned of its danger, so as to provide for the safety and permanence of its institutions. When the Government shall be once thoroughly organized upon the system of party and patronage, it will become so corrupt, that it will be vain to hope for reform or glory.

Give my kindest regards to Mrs. Peters and your daughters, and believe me,

Very truly and affectionately, yours,

JOSEPH STORY.

In the early part of this year, Andrew Dunlap, Esq., resigned the office of Attorney of the United States for the District of Massachusetts, after having filled it for some years with much ability. This was the occasion of the following correspondence : —

Boston, March 23d, 1835.

To Mr. Justice Story, of the Supreme Court of the United States, and Judge of the First Circuit, and the Honorable John Davis, Judge of the District Court of the United States for the District of Massachusetts :

In consequence of the state of my health, I have considered it my duty to the Government, and to myself, to resign the office of Attorney of the United States for the District of Massachusetts. The official connection which has subsisted between us, so harmoniously, never disturbed by a single interruption, has now ceased. But my recollection of the constant kindness and respectful treatment which I have experienced from your Honors, will never cease while my heart can beat with a grateful emotion. The official station which I have held has afforded great opportunities for professional improvement, and the time I have held it has been the happiest and proudest period of my professional life. Among my most earnest hopes, is cherished the wish, that the life

and health of each of you may long be preserved. I present your Honors, most affectionately, my farewell respects.

I am, very respectfully,

Your obedient servant,

ANDREW DUNLAP.

TO ANDREW DUNLAP, ESQ.

Boston, March 26th, 1835.

DEAR SIR:

It is with great regret I have learned that you have deemed it necessary, on account of the state of your health, to resign the office of District Attorney. During my official intercourse with you it has been a very great satisfaction to me that I have never known, even for a moment, the slightest interruption to that respect, kindness, and confidence, which are so important in the discharge of the duties of our respective stations. And I take sincere pleasure in adding, that the able and elevated manner in which you have performed all your duties, has been such as constantly to alleviate my labors, and to secure my lasting esteem. In taking leave of you in the office, which you have held with so much honor to yourself and benefit to our country, I avail myself of the opportunity of bearing a voluntary testimony to the learning, fidelity, impartiality, and integrity, which have marked every step in your progress. I shall never forget the valuable services which you have thus secured to the public, and the solid foundation of professional fame which you have reared.

I trust that your health will again be speedily restored; and I assure you that I shall ever cherish the liveliest wishes for your health, happiness, and fame.

I am, very truly and respectfully,

Your obliged friend,

JOSEPH STORY.

During this year, Mr. Professor Greenleaf wrote for

the American Portrait Gallery, a short biographical sketch of my father, to accompany an engraving which was intended to represent him. The biographical sketch was as good as the likeness accompanying it was poor, and greater praise it is not easy to bestow. In respect to the manuscript of this, which was submitted to my father, the following letter was written :—

TO SIMON GREENLEAF, ESQ.

April 15th, 1835.

MY DEAR SIR:

I have read over with great interest, and (as you may well believe) with the truest gratification, your manuscript. I think it one of the most finished and elegant compositions I ever read. I am only too conscious, that the main attractions of the picture you have drawn are due to the skill and touching kindness of the artist. I have no pretence to claim half the merits which your friendship ascribes to me, and have only the fear that the public will but too readily discern the defects in my title. But I can truly say, that except so far as this consciousness increases my solicitude, the Biography is every thing that would gratify my heart, both in its style and its sentiment.

I am, most affectionately, yours,

JOSEPH STORY.

The extradition of Fugitives from Justice, by foreign countries, forms the subject of the next letter.

TO HON. EDWARD EVERETT.

Cambridge, June 6th, 1835.

MY DEAR SIR:

In reply to your letter of the 3d instant, containing the remarks of Baron Roenné, the Prussian Chargé des Affaires,

respecting the subject of fugitives from justice from foreign countries, I beg to say, that the Law of Nations, on the subject of the right of nations to reclaim fugitive criminals from each other, is differently interpreted in different countries; and while some admit the right, others strenuously deny it, or hold it to be a mere subject of policy or political arrangement. In the United States of America, there has been as yet no recognition of any such right, unless in cases where it is expressly stipulated for in some treaty.

The Courts of the United States are not, by the present laws, invested with any authority on the subject, even if the right should be admitted to exist; and the Executive, without an Act of Congress, would not, in all human probability, interfere. Nor do I know that he could do so with effect, without such an Act. The different States in the Union, in their local Legislatures, possess the power (if they please to exercise it) to provide for the cases within their own territorial limits. But no State, except New York, has as yet, to my knowledge, legislated on the subject. And in many of the States, the doctrine of the non-existence of any right to give up fugitive criminals is maintained as the true doctrine of the Law of Nations; and in most of the States there will be found a great repugnance to legislate at all upon the subject.

There is, therefore, in my view of the matter, in the present state of the law, an almost total defect of any remedial justice on this subject in America. Congress might, if they please, supply the defect, by an Act which should give the remedy to all nations, who should reciprocate the like remedy to us. Or it might be done by treaty with any particular nation. But until some Act of Congress, or some stipulation by treaty is made, I do not perceive any real mode of redress for the existing evil.

Believe me, most truly and respectfully,

Your obliged friend,

JOSEPH STORY.



As my father had foreboded, the health of Chief Justice Marshall began rapidly to fail, and it was evident that he could live but little longer. The following letter, written upon receiving intelligence of his increasing illness, shows the effect which it had upon him, as well as the complete occupation of all his time:—

TO RICHARD PETERS, ESQ.

Newport, June 19th, 1835.

MY DEAR SIR:

Your letter brings me very melancholy intelligence respecting the Chief Justice's health; but I cannot say that it was wholly unexpected, though the nature and extent of his new disease, I did not previously understand. Great, good, and excellent man! I perceive we must soon, very soon, part with him forever.

I have a very crowded docket at Rhode Island, and I know not exactly when the Court can or will rise. We are constantly engaged, forenoon and afternoon, as long as light lasts in Court. As soon as the Court is over here, I must return to Boston, where the Circuit Court is still open, awaiting my arrival, to try some very important causes, in which witnesses, and parties, and counsel, are to be ready at the moment. The Law School, as to my department, also stands suspended until my return; and as it happens to be the most busy and important part of the term, and many students close their studies at the end of it, every day lost is to them irreparable.

I see not, therefore, how, between these double duties, I can possibly go to Philadelphia, though it would be grateful beyond expression to me to be with the Chief Justice, and to cheer his loneliness, and soothe, if I could, his sufferings. If I were to go to Philadelphia at all, I should wish to pass a day or two with him, for to go merely to meet with him, and to bid him an eternal farewell, would be too distressing to both of us to justify the interview. Indeed, I confess, that

I should scarcely feel the courage, under the most favorable circumstances, to stand in his presence, and to feel that it was the last time. Such scenes, always painful, have now become with me (from my many sufferings of this sort) agonizing to a degree which makes me dread to seek them.

I shall write him at large, either here, or when I return home; but I pray you, in the mean time, to say to him how deeply I sympathize with him, how earnestly I pray for his restoration to health, how much I wish I could be with him during his sojourn with you. I shall never see his like again! His gentleness, his affectionateness, his glorious virtues, his unblemished life, his exalted talents, leave him without a rival or a peer.

I write you in great haste. God bless you!

Yours, affectionately,

JOSEPH STORY.

On the 6th day of July, 1835, Chief Justice Marshall died. Upon the intelligence of this event, a meeting of the Suffolk Bar was immediately called in Boston, and my father was invited to deliver a discourse, commemorative of his life, character, and services. Pressed though he was, by many and arduous labors, the invitation was one which he could not decline, and he accordingly accepted it. The following letter was written, upon receiving the news of the Chief Justice's death:—

TO RICHARD PETERS, ESQ.

Cambridge, July 24th, 1835.

MY DEAR SIR:

I owe you many thanks for your late letters, which, though I have not answered, I have not forgotten; but I have been overwhelmed with business. The death of the Chief Justice did not come upon me by surprise. I had expected it ever

since I left him at Washington last winter, though the disease of his stomach was then unknown to me. I have been in wretched spirits ever since, and when his death came at last, it seemed to me that it was, after all, a fearful and sudden calamity. . . . Pray send me a copy of the Chief Justice's inscription for his monument. I rejoice that Judge Baldwin took such an interest in the Chief Justice's dying hours. I had no doubt he would, for there is no person on earth (I believe) for whom he felt so much reverence and respect. He and I shall be very sincere mourners.

I have accepted the invitation of the Boston Bar, to deliver a discourse on the Chief Justice's death. I wished to have avoided it on my personal account, but it became impossible, without doing what I would not do, and that is, assuming an indifference to the public honors which his admirable character demands. I shall endeavor to deliver it some time in the early part of September.

As to a monument at Washington, I have not much hope that it can be brought about through the instrumentality of the Bar in the United States. The interest is too distant and too loose to make the body of the Bar act upon it with spirit. Congress will probably place his bust in the Supreme Court room. We shall, I hope, in Boston and its vicinity, erect a cenotaph to his memory at Mount Auburn. You at Philadelphia should erect a like monument there. Beyond these places, I have not much expectation. Richmond has done well. However, you are to understand, that these are my private thoughts only. For, in public, I shall promote with all my power a public monument at Washington; but I think it will not be accomplished. I would willingly be on the committee for the purpose. I think it not proper that it should come from the Bar, and through the Bar exclusively. But I will cheerfully subscribe towards it.

As to the Chief Justice's successor, I do not even venture to hazard an opinion, or even a conjecture. I shall wait events. Whoever succeeds him will have a most painful

and discouraging duty. He will follow a man who cannot be equalled, and all the public will see, or think they see, the difference. A situation which provokes a comparison so constant and so discouraging, is not enviable. Let me only add, for your eye, lest there should be some idle conjecture elsewhere, that I have never for a moment imagined that I should be thought of. So that I am equally beyond hope or anxiety.

Yours, most truly and affectionately,

JOSEPH STORY.

The discourse was delivered in Boston on the 15th day of October, 1835. It is a beautiful exposition of the life, character, and services of the Chief Justice, uttered in the warm and eloquent language of friendship.

*"His saltem accumulem donis, et fungar inani  
Munere."*

The inscription written by Chief Justice Marshall for his own tomb, which is alluded to in the previous letter, is thus spoken of in the discourse :

"He was fully aware of his approaching end, and prepared to meet it with a calmness built upon the fixed principles, by which he had regulated his life. Two days only before his death he wrote an inscription to be placed on his tomb, in the following simple and modest terms : 'John Marshall, son of Thomas and Mary Marshall, was born on the 24th of September, 1755, intermarried with Mary Willis Ambler the 3d of January, 1783, departed this life the —— day of —— 18——.'

"What can be more affecting than these few facts, the only ones which he deemed in his last moments worth recording ! His birth ; his parentage ; his marriage ; his death ; — His parents, to whose memory he was attached with a filial piety, full of reverence ; — his marriage to the being,

whom he had loved with a singleness and devotedness of affection never surpassed;—his own birth, which seemed principally memorable to him, as it connected him with beings like these;—his own death, which was but an event to re-unite him with those, who had gone before, in a world, where there should be no more suffering or sorrow; but where kindred souls should dwell together, even as the Angels in Heaven.”

At the opening of the Supreme Court, in the succeeding January, Mr. Clay, having moved that certain resolutions by the Bar of this Court, expressive of their highest respect for the extraordinary ability, learning, and virtues of Chief Justice Marshall, and of their sense of the great loss sustained in his death by the whole country, should be entered upon the records of the Court, my father replied as follows:—

“The Court receive with great sensibility the resolutions of the Bar, in regard to the late Chief Justice Marshall. In this tribute of affectionate respect to his memory, we most cordially unite. It contains a true, as it does an eloquent expression of feelings and sentiments common to the whole profession. The community have sustained a severe loss in the departure of this great and good man, who was ripe in years and full of honors. His genius, his learning, and his virtues, have conferred an imperishable glory on his country, whose liberties he fought to secure, and whose institutions he labored to perpetuate. He was a patriot and statesman of spotless integrity and consummate wisdom. The science of jurisprudence will forever acknowledge him as one of its greatest benefactors. The Constitution of the United States owes as much to him as to any single mind, for the foundations on which it rests, and the expositions by which it is to be maintained. But above all, he was the ornament of hu-

man nature itself, in the beautiful illustrations which his life constantly presented of its most attractive graces and most elevated attributes. We who have been the witnesses and companions of his judicial labors, cannot but feel the desolation which has visited us. One consolation is, that he is now beyond the reach of human infirmity, and (as we trust) in the possession of the rewards of a blessed immortality. This hall will never again be honored with his presence. But so long as it shall remain devoted to the administration of public justice, so long will it preserve the best records of his fame. He, who in future ages shall here seek his monument, need but look around and before him. The voices of the eloquent and the learned, which will here pronounce his name, will never fail to breathe forth at the same time his most affecting praise.

“It is the order of the Court, that the resolutions of the Bar be entered upon their records; and the Judges will wear crape on their left arm during the term, as a fit expression of their entire coincidence with the feelings of the Bar.”

The following letter mentions the discourse on the Chief Justice, as being in preparation. The memoir referred to is the autobiography used in the early part of the present work.

TO MISS HARRIET MARTINEAU.

Cambridge, October 8th, 1835.

MY DEAR MISS MARTINEAU :

I give you a thousand thanks for your memoirs of your life. It is very interesting to me, from the incidents which it details; but far more from the graphic manner in which it presents the outlines of your thoughts and character. It has let me into the interior, as it were, of your intellectual resources and your favorite pursuits; I shall cherish it with peculiar pleasure, as a mark of your kind confidence, and my children shall possess it, with your good leave, as a keepsake of yourself.

Some years ago, at the urgent suggestions of some friends, I put on paper a little sketch of my own life. It does little more than detail its principal incidents, and contains scarcely any thing of my thoughts or opinions, or even pursuits. I wish it did. But the truth is, that we Americans have not yet learned the art of memoir writing. We have such a dread of being accused of egotism and of being ridiculed for it, that we dare not speak of ourselves as we really think, and we conceal those personal anecdotes, upon which we place most value, and in which we have the deepest interest. However, when you visit us, I will show you the manuscript, if you have any curiosity to read it.

I regretted that I was not at home when you did us the favor of a call. We shall be expecting you to make your promised visit as early as you can in November, and then I must contrive to have leisure (which I have been seeking for twenty years as a lost treasure) to talk all sorts of matters over with you. Of late I have been much engaged in writing a sketch of a discourse upon the life of Chief Justice Marshall, which is to be delivered on the 15th of October. It is (strange as it may seem) at once a delightful and painful subject; delightful, as I am in love with his character, positively in love; painful, as I never hope to look upon his like again.

I wait with the deepest interest for the next news from England. The Lords have fairly destroyed the Municipal Corporation Bill. Their amendments seem to me to make it as bad as it can well be, for purposes of reform. I suppose the Commons will at once reject it, and then will arrive the crisis which I have long foreseen—the struggle for power between the people and the aristocracy. I cannot but think that the latter are wholly wanting in policy in their line of manœuvres.

Pray remember that I lived twenty years in Salem. It is the scene of many joys, and many, very many sorrows to me. There I buried many that I loved. But I must away from

such thoughts. My native place (Marblehead) is four miles off. Mr. Phillips must take you to visit it. It is a fishing town, almost in its state of primitive simplicity. My father lies buried there. He was a physician of very extensive practice, and one of the most excellent of fathers.

Believe me, truly and affectionately yours,

JOSEPH STORY.

The following verses were written in February, 1836, on Chief Justice Marshall, as an

INSCRIPTION FOR A CENOTAPH.

To Marshall reared — the great, the good, the wise ;  
Born for all ages, honored in all skies ;  
His was the fame to mortals rarely given,  
Begun on earth, but fixed in aim on heaven.  
Genius, and learning, and consummate skill,  
Moulding each thought, obedient to the will ;  
Affections pure, as e'er warmed human breast,  
And love, in blessing others, doubly blest ;  
Virtue unspotted, uncorrupted truth,  
Gentle in age, and beautiful in youth ; —  
These were his bright possessions. These had power  
To charm through life and cheer his dying hour.  
Are these all perished ? No ! but snatched from time,  
To bloom afresh in yonder sphere sublime.  
Kind was the doom (the fruit was ripe) to die,  
Mortal is clothed with immortality.



## CHAPTER V.

### PROFESSORIAL AND JUDICIAL LIFE.

MY FATHER'S CLAIMS TO THE CHIEF JUSTICESHIP OF THE SUPREME COURT — CAUSES OF HIS REJECTION — PARALLEL BETWEEN HIM AND BULLER — LAW SCHOOL — LETTER FROM MR. JUSTICE VAUGHAN — ARTICLE IN KRITISCHE ZEITSCHRIFT ON CONSTITUTION AND PUBLIC LAW OF THE UNITED STATES — LETTERS FROM PROFESSOR MITTERMAIER IN RELATION TO IT — ARTICLE IN THE *RÉVUE ÉTRANGÈRE* ON THE ORGANIZATION AND JURISDICTION OF THE NATIONAL COURTS IN THE UNITED STATES — LETTER OF MONS. FELIX — PUBLICATION OF MISCELLANEOUS WRITINGS — DEDICATION — CORRESPONDENCE WITH CHANCELLOR KENT — CARE IN EXAMINING AUTHORITIES AND PREPARING HIS WORKS — MEMORIAL ON FRENCH CLAIMS — ACTS AS CHIEF JUSTICE — NUMBER OF JUDGES INCREASED — LEGAL MEMORY — NOTICE OF EQUITY JURISPRUDENCE — PLAN OF TREATISES TO BE WRITTEN — ANECDOTE OF MR. DANE — REPORT ON CODIFICATION — EXTRACTS — CENTENNIAL CELEBRATION OF HARVARD UNIVERSITY — SPEECH BY MY FATHER.

UPON the death of Chief Justice Marshall, the profession, generally, looked forward to the appointment of my father as his successor. His distinction, his affluent learning, his long services, his seniority of position on the Bench, all seemed to point him out as the fit successor to the dignity of the Chief Justiceship. But the expectations of the profession and of his friends were equally disappointed. His constitutional views did not coincide with those of General Jackson; and although he had fully supported the principles set forth in the

proclamation of the Executive against the doctrines of nullification advocated by South Carolina, yet it was well known that he regarded many of the prominent acts of Jackson's administration as exceeding the limits of Constitutional authority. This alone was sufficient to arouse the hostility of the President, who looked upon all persons entertaining political views different from his own, as enemies, and who was as remarkable for dogmatism of action as of opinion. "The school of Story and Kent" (to use his sneering phrase) could hope for but little favor at his hands. It differed from him in its Constitutional doctrines. As for my father, he never had the least expectation of that preferment to which his fame and long services entitled him. The feelings, with which he looked upon this matter, will appear from the following letter written at this time:—

TO MR. JUSTICE MCLEAN.

Cambridge, October 12th, 1835.

MY DEAR SIR:

. . . I have been made quite melancholy by the death of the Chief Justice. I have not even ventured to conjecture who will be his successor. But I confess that I do not think the station an enviable one to any person who does not enjoy the entire confidence of the Court, and who has not also a very high standing in the estimate of the Bar. I have always considered it a station of duties peculiarly trying and difficult, and, in the possession of an ordinary man, I am sure it would be very apt to disgrace him. I take it for granted that all of us who are on the Bench are deemed *hors du combat*.

The state of politics appears to me to be any thing but satisfactory. I cannot imagine who will be the next Presi-

dent, and indeed I am coming fast to the opinion that the popular voice, in the future, is far more likely to be in favor of an ordinary man than of one, whose talents or virtues or principles are very high or very scrupulous. I have quite reconciled myself to acquiesce in any choice which is not founded on corruption. But I entertain great doubts whether, in the future, we can hope for success in carrying any administration which shall be formed on lofty or pure principles. I have been a little surprised at the apparent popularity of General Harrison; but as I have a very slight knowledge of him, I supposed that it was owing to my ignorance of his real character. The Whigs will, as usual, I suppose, be divided in their choice. I had seen your letter in the newspapers before I went on my Eastern circuit. It did not surprise me, because it comported with the language of your conversations last winter. I doubt, however, whether the number of candidates will be probably diminished except in your case. I do not understand the course of Mr. Clay. . . .

I pray you to present my kind regards to Mrs. McLean, and to believe me

Very truly and affectionately your friend,

JOSEPH STORY.

The parallel, which the appointment of Mr. Justice Buller to the Bench at the age of thirty-two, affords to the elevation of my father to the highest judicial honors of his country at the same early age, has been before alluded to. But the parallel does not stop here. When Buller became a Judge he took his seat by the side of Lord Mansfield, who had then been upon the Bench for many years, and was in the zenith of his reputation. Between Mansfield and Buller a warm intimacy was established, growing out of their great similarity of opinion and feelings. Lord Mansfield, after a splendid judicial career of thirty-two years, on account of his bodily infirmities,

was forced to resign, and it is well known that his principal reason for so long retaining office was the hope of insuring his seat to Buller, in case of a change in the ministry, Kenyon being the favorite of the Lord Chancellor (Thurlow) who did not like Buller, and Pitt, who seldom rewarded any but political labors, being also no friend to Buller's appointment. For the two years immediately preceding the resignation of Lord Mansfield, though his faculties retained all their freshness and vigor, ill health prevented him from taking his seat on the Bench, and during that period, though Ashurst was the senior puisne judge and nominally presided, Buller in fact took the lead in the Court and acted as Chief Justice, displaying the abilities of a great Judge. Upon the resignation of Mansfield, however, strong as were the claims of Buller in point of power and learning, he was superseded by the appointment of Lord Kenyon to the vacant seat.

The parallel suggests itself naturally. Chief Justice Marshall had been long on the Bench when my father, at thirty-two years of age, was appointed Judge. The strongest attachment grew up between them, and their views and feelings were uniformly similar in all great questions. It was the cherished and oft-expressed wish of Marshall that my father should succeed to his place, and in the hope of a change in the administration which would favor that desire, he retained his seat as long as he lived. During a short interregnum between his death and the appointment of his successor, my father presided in the Court with distinguished ability, but, wanting political claims, he was nevertheless passed by, and Mr. Taney, an eminent lawyer of Maryland, and

recently a member of the Cabinet of General Jackson, was promoted to the Chief Justiceship.

Nothing of particular note occurred in the Law School during this year. My father's connection with Mr. Greenleaf was in every way most agreeable. The school was rapidly increasing, and now numbered fifty students. The new building was large and commodious, and great additions were made to the library. All things conspired to render the position of my father pleasant, and he devoted himself with great zest and delight to his daily instructions and moot-courts, as well as to the preparation of his treatise on Equity Jurisprudence. This work, which, as he had originally supposed, would make one volume, grew so upon his hands as he developed it, that he soon perceived it would occupy at least two and probably three volumes.

The following gratifying letter from Mr. Justice Vaughan, acknowledging the receipt of copies of my father's Commentaries, was received in the early part of this year.

TO HON. JOSEPH STORY.

London, January 1st, 1835.

DEAR SIR:

I hope you will do me the honor to accept my cordial acknowledgments (however late they may arrive) for the gratifying honor you conferred upon me when you presented to me your valuable Commentaries upon the Constitution of the United States, upon the Law of Bailments, and upon the Conflict of Laws, foreign and domestic.

The interval which has elapsed since I received them has enabled me to cultivate an acquaintance with them, from

which I have derived much profit and agreeable recreation, and I therefore presume to bear my humble but faithful testimony to their extraordinary merit. You are indeed, by your publications, a great benefactor to all parts of the civilized world, and have raised to yourself "*monumentum ære perennius*." As the day cannot be far distant in which they will find very general circulation in England, I am persuaded they will tend to do away the reproach to which you very justly feel the English lawyers are obnoxious, namely, that of manifesting an extraordinary indifference, amounting almost to a distaste to the study of foreign jurisprudence.

Having had repeated conversations with Lord Lyndhurst (to whom the King has again recently committed the great seal) and with Lord Denman, the Chief Justice of the King's Bench, to both of whom I am very well known, from having travelled the same circuit with them for many years, I shall be much disappointed if they do not make frequent reference to your works, as containing a mine of precious ore which will abundantly reward the pains of searching for it.

As a member of the Judicial Committee of the Privy Council, where we are summoned to decide upon appeals involving an almost infinite variety of matter for legal adjudication, and where each member of the legal profession, successively (four being the number required to attend) delivers the judgment of all the Lords assembled in council, I feel it a subject of sincere congratulation to myself that I can refer to works of such sterling merit as those you have so kindly presented to me, to assist in conducting me to a right decision.

Allow me once more to express the deep and grateful sense I entertain of the distinguished attention and kindness you have so repeatedly shown to me, and to believe me, with unfeigned esteem and regard,

My dear Sir,

Yours, very truly and faithfully,

G. VAUGHAN.

During this year, my father prepared for the "Kritische Zeitschrift," a periodical published at Heidelberg, under the editorial charge of the distinguished jurist, Professor Mittermaier, an elaborate and able article on the Constitution and Public Law of the United States. The following extracts from letters by the editor, acknowledge the reception of this article, and shows that a German translation of the "Conflict of Laws," was in progress: —

TO MR. JUSTICE STORY.

Heidelberg, 21 Novembre, 1835.

MONSIEUR :

J'ai eu l'honneur de vous adresser une lettre il y a huit mois. Comme je n'ai pas eu réponse, j'ai peur que vous n'avez pas reçu ma lettre, et je me permets de vous écrire de nouveau.

Agréez mes remerciemens les plus sincères pour la bienveillance avec laquelle vous m'avez honoré d'un exemplaire de votre excellent ouvrage, "Le Conflit des Lois." J'ai fait une analyse dans mon journal, en déclarant que votre ouvrage est le meilleur dont la littérature se peut glorifier. Un jeune docteur de Heidelberg s'occupe de faire une traduction Allemande de votre ouvrage. Je vous exprime aussi ma reconnaissance pour l'article sur le droit Américain, par lequel vous avez bien voulu enrichir mon journal. La traduction est faite, et l'article sera imprimé en deux mois.

Permettez moi, aussi, de profiter de l'occasion, et de vous témoigner l'assurance des sentiments les plus respectueux que tous vos ouvrages m'ont inspiré. Tous nos jurisconsultes sont d'accord que vos ouvrages sont classiques. J'admire les vastes connaissances, l'esprit qui approfondit les questions, la clarté de vos développemens, et les résultats de vos recherches.

Agréez l'assurance du profond respect, avec lequel j'ai l'honneur d'être

Votre tout dévoué,

MITTERMAIER, *Professeur.*

TO MR. JUSTICE STORY.

Heidelberg, 30 Décembre, 1836.

MONSIEUR :

C'est avec une profonde gratitude, que j'ai reçu le paquet que votre extrême complaisance m'a destiné. Agréez mes remerciemens les plus respectueux. Permettez moi de vous offrir quelques ouvrages, publiés en Allemagne, dignes de votre attention. . . .

Vous trouverez, aussi, un exemplaire du cahier du journal, qui contient votre article. Le nom de Story est si célèbre en Allemagne, que tout ce qu'il vient de vous, excite la plus vive attention.

Votre ouvrage sur l'Equité m'intéresse infiniment. Je ferai un article dans le journal. La matière n'a pas seulement un intérêt pour l'Angleterre, et pour les États Unis; dans les vues plus étendues, la matière sera toujours intéressante pour les jurisconsults de tous les pays. Notre Droit Romain est basée, pour la plupart, sur le Droit d'Equité, proposé par le préteur Romain, et chaque législateur contient des parties dans lesquelles le juge doit suivre plutôt les principes de l'équité que du *Strictum Jus*, ou la lettre d'une loi. Vous avez traité la matière avec tant de profondeur, et tant d'esprit, que la connaissance de votre ouvrage contribuera de couronner votre nom des rayons d'une nouvelle gloire.

Je ferai, aussi, un article sur votre ouvrage, "Miscellaneous Writings," qui contient des discours et d'articles qui m'intéresse beaucoup. Partout je reconnois l'éloquent professeur, le profond jurisconsulte, et le grand praticien, qui approfondit les choses.

Permettez moi de réitérer mes remerciemens, en vous priant d'agréer l'assurance du profond respect, de la part de

Votre tout dévoué,

MITTERMAIER.

My father also found time to furnish another elaborate



article on the Organization and Jurisdiction of National Courts in the United States, during this year, for the "*Revue Étrangère*," at Paris. The following letter from the editor, Mons. Foelix, alludes to this contribution : —

TO MR. JUSTICE STORY.

Paris, le 20 Février, 1836.

MONSIEUR :

J'espère que vous avez reçu dans le temps ma lettre du 19 Septembre dernier, par laquelle je vous ai accusé la réception de votre ouvrage sur les Bailments, et de votre article sur l'Organisation et la Jurisdiction des Cours de Justice en Amérique. Cet article a été publié dans le cahier de Décembre de la *Revue Étrangère*, qui vous parviendra avec la présente. Il a été lu avec le plus grand intérêt, par toutes les personnes jalouses de connaître la législation et l'organisation judiciaire des pays étrangers.

Vous rendrez un grand service aux collaborateurs, et à tous les lecteurs de la *Revue*, en continuant nous donner quelques articles sur la législation et les tribunaux des États Unis, lorsque vos occupations vous le permettront.

Cette lettre vous parviendra par les soins de M. Charles Sumner, de Boston, à qui je l'adresse par une occasion.

Recevez l'assurance de la haute considération avec laquelle j'ai l'honneur d'être,

Votre dévoué serviteur,

FÆLIX.

In the latter part of the year 1835, my father revised and printed a selection from his miscellaneous writings, at the request of the publishers. This volume he dedicated to the Hon. Josiah Quincy, then President of Harvard University, and a valued friend, with the following letter : —

TO THE HON. JOSIAH QUINCY, LL. D., PRESIDENT OF HARVARD  
UNIVERSITY.

Cambridge, October, 1835.

SIR :

In dedicating this volume to you, I may (not unnaturally) be thought to indulge a wish in some sort to discharge the debt of gratitude, which I owe to the institution over which you preside, for the many favors bestowed upon me. But, gratifying as such an expression of reverend regard for our Parent University would at all times be to me, I confess, that I seek on the present occasion rather to offer it as a testimony of my deep sense of the worth of your personal character. Few men have acquired so just a distinction for unspotted integrity, fearless justice, consistent principles, high talents, and extensive literature. Still fewer possess the merit of having justified the public confidence by the singleness of heart and purpose, with which they have devoted themselves to the best interests of society. In every station, to which you have been called by the free suffrages of the people, you have discharged its duties with the most exemplary ability, fidelity, and conscientiousness. In your present exalted station, to which you were invited by the combined voice of the guardians of the University, under the most flattering circumstances, every act of your life has conduced to establish the importance and wisdom of the choice. May you long continue to wear its honors with unsullied dignity. In the language of your own favorite Poet, I may say, *Cura Patrum . . . tuas virtutes in ævum per titulos memoresque fastos æternet.*

I have the honor to remain, most truly,

Your obliged friend,

JOSEPH STORY.

The following exuberant letter from Chancellor Kent, relates to this volume : —

TO HON. JOSEPH STORY.

New York, October 10th, 1836.

MY DEAR SIR :

I have delayed, far too long, the expressions of my feelings of gratitude, love, and admiration, for the kind and affectionate manner in which I was treated by you on my late visit to Boston and Cambridge. The impression was deep, vivid, and durable. The excursion to Mount Auburn was pre-eminently interesting and affecting, and my wife and I can never forget the manner, nor the stirring effect with which, on that excursion, you poured forth the effusions of your poetical, eloquent, and matchless genius, and glowing affections.

I have finished a thorough and complete reading of your *Miscellaneous Works*, which you were so obliging as to present to me at Cambridge. The volume, in the neatness, beauty, and taste of its mechanical execution, was worthy of its contents, and I do not hesitate to say, that you have in every way displayed the glories and splendid triumphs of literature, the science and arts, and especially of the all comprehensive and divine science of law, in a way, and with a force of learning, energy, eloquence, justice, and truth, that is unequalled in any performance of the kind on either side of the Atlantic. I was delighted and astonished at the variety, exuberance, comprehensiveness, and depth of your moral, legal, and political wisdom. Every page and ordinary topic is replete with a copious and accurate display of principles, clothed in a powerful and eloquent style, and illustrated and recommended by striking analogies, and profuse and brilliant illustrations. You handle the topic of the mechanical arts, and the science on which they are founded, enlarged, adorned, and applied, with a mastery, skill, and eloquence, that is unequalled. And as for jurisprudence, you have again and again, and on all occasions, laid bare its foundations, traced its histories, eulogized its noblest masters, and pressed its inestimable importance, with a gravity, zeal, pathos, and beauty, that

is altogether irresistible ; and I must, and do confess, that I feel quite humble when I know and feel how exceedingly I fall short of such surpassing excellence.

My dear sir, you must forgive my enthusiasm, for I write under the strong excitement arising from the perusal of your invaluable volume ; and when I reflect upon what you are now doing, and the rapidity with which you delight and instruct us by your growing volumes, I am certain you are equally kindling the admiration of the most illustrious jurists in England, France, Holland, and Germany, and pouring a flood of more than fabled glory upon the Hesperian regions of the West.

I hope and trust that you will recollect that we all inhabit frail tenements of clay, and that, if you press your studies intemperately, you may destroy your health, and check your brilliant career, and damp the hopes and expectations of your country. We live in a very perilous time, in which our fair and splendid fabrics of Governments, and our wide and deep jurisprudence, are threatened to be weakend and disturbed to the very foundations. May you have health, and then I know you will not lack perseverance, to accomplish all your plans, and along the stream of time to gather all your fame, and prove a stable and impregnable bulwark against all dangerous innovation, and all ferocious assault, of the splendid structures created by the wisdom and patriotism of our fathers.

With Mrs. Kent's and my kind respects to Mrs. Story,

Believe me, affectionately, yours,

JAMES KENT.

My father's answer is as follows : —

TO HON. JAMES KENT, LL. D.

Cambridge, October 15th, 1836.

MY DEAR SIR :

I received a day or two since your highly interesting letter, and I will not attempt to disguise how much I was gratified

by it. I am truly sensible that I ought to attribute much of the praise, which you bestow upon my miscellaneous writings, to your kind and indulgent view of every thing which comes from the hands of your friends. Doubtless your friendship on this occasion will have led you to overrate the merits of those compositions. But I confess that I still am deeply affected by this renewed proof of your affectionate regard. I am proud to be deemed worthy of such praise, for the praise of no one is more dear and precious to me than yours. I do not here refer merely to the suggestion, *laudari a viro laudato*, but to the conscious satisfaction of knowing that you are one who speak with a sincere, as well as an open heart,—and what tribute is so sweet as that?

Since I wrote you, I have found time to examine various parts of your Commentaries in the last edition with more care than I had previously done. You have everywhere improved the text by your additions, and infused into it the new and fresh resources of your daily augmenting learning. I rejoice to find also that in America the various merits of this admirable work are now universally and familiarly established. Abroad also it is acquiring a solid and imposing character; and I find from incidental notices of it, here and there in legal publications in England, that it receives a just and liberal praise. This is as it should be, for England is deeply interested in cultivating a thorough knowledge of American jurisprudence, and it would betray a lamentable want of professional ambition not to master a work which has become our first juridical classic.

The second volume of my work on Equity has just been completed, and the sheets will, in the course of a week, be in the hands of a binder. I shall send you the first copy which I can command. I hope you will find that I have not faltered in my efforts. I have written nearly the whole work since I returned from Washington, and it has been a Herculean task, for I have examined (as my habit always is) all the original authorities for myself.

I thank you for your kind hints in regard to my health, which, however, is now quite good. But I am admonished that I must slacken the amount of my labors, if I would preserve it. I hope, in the future, to be able to "make haste slowly;" but I should be churlish indeed if I did not resolve to take the sound advice of my friends on this subject, even if I personally saw no reason myself for disquietude.

With my kindest regards to Mrs. Kent, and your family, I subscribe myself most truly and affectionately your friend,

JOSEPH STORY.

The statement in this letter in respect to his habit of examining original authorities, shows how careful and exact my father was in the preparation of his Commentaries. He did not allow his facility to seduce him into carelessness. He took nothing upon trust. Never relying upon the second-hand statements of others, he always examined the original sources of every doctrine; and no work or case, certainly none of the least importance, ever was cited by him before it had been consulted. In respect to his "Conflict of Laws," we have his own statement in the Preface, that every authority cited by him had been examined. And in this letter, a similar statement in regard to the work on "Equity Jurisprudence" is made. A copy of each edition of his books, bound up with blank interleaves, he always kept beside him, and in the course of his reading anywhere, whether in the new Reports, or in the examination of older cases, or in the study incidental to his judicial duties, or to his other works, if he came across any thing illustrative, explanatory, exceptional, or additional, to the doctrines contained in any one of his books, he was in the habit of at once writing it down in its proper place on the blank

leaf, while the whole subject was fresh in his mind. With such habits as these, it is evident that only continued and systematic labor, facility of composition, and a native promptitude in giving himself out, could have enabled him, in so short a time, to write so much and so well.

In the early part of the preceding year, my father finished the first volume of his Commentaries upon Equity Jurisprudence, and it was published in the beginning of 1836. The second volume had scarcely been begun, when his labor upon it was interrupted by the session of the Court at Washington. But immediately upon his return to Cambridge in the spring, he devoted himself to its composition with great assiduity. By the middle of August it was printed, having occupied him only about six months, during which time he had also attended to all his judicial and professional duties with his usual activity. Steady industry alone does not account for this great rapidity. It is to be explained by the fact, that principles and cases were systematized in his mind, which yielded, easily and freely, its store of learning. He had not only read himself full in all departments of the law, but what he had read he had thoroughly digested and arranged, so that it all lay ready to his hand.

And this leads me to speak of his extraordinary legal memory. His mind was a great storehouse of law. He was rather embarrassed with too much than too little learning. In writing, the fear rather was, that he should overflow the cistern into which he poured himself, than that he should not fill it. It is difficult to say whether his memory was more tenacious of

principles or of cases. In both it was extraordinary. He examined every new volume of Reports as soon as it was issued, and made every important case his own. Every new modification of principle he systematized, and, as it were, laid it away in its proper receptacle in his mind. So perfectly ordered was every thing in his memory, that of all the leading cases in the books, he not only knew the principle adjudged, and the name of the parties, but remembered the volume, the page, and even the place on the page where it was enunciated. Often he could even quote passages from memory, where they were peculiarly important. In the course of an argument, it was next to impossible to entrap him, by a partial reading from the judgment of the Court. How often, under such circumstances, would he interrupt the advocate, by calling his attention to the important modification which immediately followed the proposition cited ! Yet this great memory of cases never encumbered the free action of his mind. He considered law to be a living principle, and not a dead accumulation, and he loved to expound it as such.

The Commentaries on Equity Jurisprudence are remarkable for their admirable arrangement, lucid exposition of principles, their richness of illustration, and the comprehensive spirit in which they are written. "In this work," to use the language of the London Law Magazine, "the history of Equity Jurisdiction is stated, the principles are developed upon which it is maintained, and the entire equitable system assumes a philosophical character, with which it never had been invested by any preceding author." It performs for Equity the same service that Blackstone's Commentaries performed for



the Common Law, giving it for the first time completeness of outline and binding the various scattered doctrines into one capacious form.

This work was dedicated to Honorable William Prescott, with the following letter :—

TO THE HONORABLE WILLIAM PRESCOTT, LL. D.

Cambridge, December, 1835.

SIR :

It affords me sincere gratification to be allowed to dedicate this work to you, upon your retirement from the Bar, of which you have been so long a distinguished ornament. More than one third of a century has elapsed, since, upon my first admission to practice, I had the honor of forming an acquaintance with you, which has ripened into a degree of friendship, of which I may be truly proud. It has been my good fortune, through the whole intermediate period, to have been a witness of your professional labors ;—labors equally remarkable for the eminent ability, untiring research, profound learning, and unsullied dignity, with which they were accompanied. They have brought with them the just reward due to a life of consistent principles, and public spirit, and private virtue, in the universal confidence and respect, which have followed you in your retreat from the active scenes of business. This is a silent but expressive praise, whose true value is not easily overestimated. I trust, that you may live many years to enjoy it ; for the reason so finely touched by one of the great Jurists of Antiquity : *Quia Conscientia bene actæ vitæ, multorumque benefactorum Recordatio jucundissima est.*

JOSEPH STORY.

During this year (1836) my father also drew up a memorial in behalf of his brother-in-law, Mr. Fettyplace, and other claimants, praying indemnification for the

seizure of the schooner *Reward* by France, under the treaty of February 2d, 1832, between France and the United States. This memorial contains a very elaborate argument on several important questions of Prize Law. In his private copy, I find the following note appended, in his handwriting:—

“The commissioners rejected the claim; but, in my judgment, in violation of the clearest principles of law and justice.—J. Story, 1837.”

Although Mr. Taney was nominated to the vacant seat of the Chief Justice in the beginning of the session of 1836, yet as his nomination was not acted upon at once, my father being the senior Judge by appointment, acted as Chief Justice. The following letters, written during this session, very soon after his arrival at Washington, will show the coincidence of opinion and feeling in the Court, and his feelings of gloom at the loss of Marshall.

The bill for the increase of the number of Judges, alluded to in the first letter, was passed by Congress, making the Court to consist of nine Judges instead of seven.

TO CHARLES S. DAVEIS, ESQ., OF PORTLAND,

Washington, January 23d, 1836.

MY DEAR SIR:

Your late letter, with its accompaniments, was very interesting to me, as, indeed, I may truly say every thing from your pen is. I have read the letters of Causidicus with pleasure. They are evidently the product of a young but reflecting mind, and contain truths which must be felt and understood in England. I confess, that for a long time I have entertained an opinion favorable to the separation of the

judicial from the political functions of the Chancellor. The Union is now constantly embarrassing the progress of public justice, and, as I think, also, having a tendency insensibly to give a complexional cast to some decisions which may be deemed juridico-political. I have not been an inattentive observer of the gradual progress of English opinions towards this result, and can scarcely doubt that the time is not far distant, when a regular divorce will be pronounced by the highest authority, not merely *a mensa et thoro*, but *a vinculo* between them.

I am truly grieved to hear of the death of Lord Milton, and your letter brought me the first tidings. It must make Wentworth House a scene of deep lamentation and mourning, in place of that quiet and delightful domestic and friendly circle so fairly brought out in Mr. Ticknor's graphical narrative. It seems a mysterious dispensation of Providence to us, though doubtless founded in consummate wisdom, that such a husband and such a parent should have met, in such rapid succession, with losses so absolutely irreparable. My heart has so often bled in the same way, that it costs me nothing to unite my sorrows and my sympathies with his.

I shall not say to you how much, *ab imo pectore*, I am gratified with your kind praise of my writings. I am sensible that you see and read as a friend; but after all, I have no inclination to struggle against such commendation, though I have many scruples as to how I can deserve it. The American Monthly I have not seen, and know of it only as you state it. The North American Review is brim full of kindness, but then it comes from one who is a friend, full of genius and persuasive eloquence. I hope it will make me more ambitious in future to justify such criticism.

As yet the Court is without a Chief Justice, and from what I learn, the probability is that none will be appointed, until Congress has acted upon the bill for increasing the number of Judges. It will be some weeks before that subject will come under discussion in the House.

Our affairs with France assume daily a more critical posture; but I trust we shall touch and go, notwithstanding. I incline to believe that Congress will wait awhile, until we can hear how the President's Message is received by the French Government.

Believe me most truly and affectionately yours,

JOSEPH STORY.

TO MISS HARRIET MARTINEAU.

Washington, February 8th, 1836.

MY DEAR MISS MARTINEAU:

Owing to the retardation of the mail by this most extraordinary winter, I did not receive your letter of the 30th of January until a day or two ago. I thank you most sincerely for it. It was doubly welcome, because from your various engagements it was wholly unexpected by me. So much the better. The voice and writing of a friend always come over me with a cheering influence.

I have been in reality quite out of spirits during my sojourn here, although externally I suppose I wear the usual air of cheerfulness. Nothing is more irksome than to seek sympathy among strangers for the languor of a heavy heart; and Washington may be truly described as a city of strangers to each other. I miss the Chief Justice at every turn. I have been several times into the room which he was accustomed to occupy. It yet remains without an inhabitant, and wears an aspect of desolation, and has a noiseless gloom. The table at which he sat, the chair which he occupied, the bed on which he slept,—they are all there, and bring back a train of the most melancholy reflections. Consider for a moment that I am the last of the Judges who were on the Bench when I first took my seat there. I seem a monument of the past age, and a mere record of the dead.

But I will not trouble you on this subject. You can readily comprehend what I feel. The nominations of Chief Justice, and Associate Justice, which were made a month ago, have

not been acted on, and probably will not be for some time. There is a bill before Congress to increase the number of Judges and to change the Circuits; this will, of course, have some effect upon the locality of the Judges, and the nominations will await the decisions of Congress on the bill. In the mean time, I act as *locum tenens* of the Chief Justiceship. Mr. Taney will be confirmed, and then my duties as presiding officer will cease.

Thanks to the friendly mediation of the British Government, I think we shall now have no war. It is a fine illustration of the magnanimity of your Government, and will tend greatly to diffuse among the American people that friendly feeling which one common lineage should of itself awaken and perpetuate. But for this mediation, mad as the project may appear to you, I fear we should have had war. The rashness, self-confidence, and flattered vanity of the President, with the interested motives of those who can command his ear, would probably have precipitated this prosperous country into that worst of all calamities, corrupting morals, and rending hearts, and destroying the gentler virtues.

I am glad that you think so favorably of Boston and its vicinity. The inhabitants are truly hospitable, intelligent, and virtuous. But they are also, what I know you greatly prize, eminently domestic. I have had no desire that you should mix a great deal in our merely fashionable circles, for I suppose they are pretty much alike, all the world over; formal, heartless, and conventional in manners and pretensions. But I have greatly desired that you might see our homes as they are, that you might join in those quiet family circles, where the retiring modesty of our well-educated females warms into confidence, and gives out their cultivated sense, their well-tempered affections, and their frank yet simple welcome. I know that such scenes are the delight of your heart; and I have ever been most anxious that you should know something of New England in this by-way of life.

I rejoice that the prolongation of your visit will enable me to see you again before your final departure from us. What a sad thought, that the whole Atlantic must soon roll between us and you! How your time is to be occupied in the interval you do not say, but I trust that you will not have left the neighborhood of Boston before my return home; for I have a mighty love of ghost stories just at the witching time of night. . . .

I am glad you speak encouragingly on English affairs; but I see no English newspapers here, and the last elections in Northamptonshire, &c., look against the Ministry. I long to read the Spectator.

The time for going to Court is arrived. Good-bye; may God bless you wherever you are, is the affectionate wish of your friend,

JOSEPH STORY.

TO PROFESSOR GREENLEAF.

Washington, February 9th, 1836.

MY DEAR SIR:

. . . The business of the Court goes on well, and we master it in perfect harmony. I have no reason but to be perfectly satisfied with my position with my present brethren on the Bench. Their conduct makes my temporary presidency a desirable rather than a painful post.

I think we shall get along through the docket at least ten days earlier than usual. The course of decisions hitherto has been very satisfactory to my mind, and we all work in team with a steady pace. . . .

Believe me, most truly and affectionately,

Your obliged friend,

JOSEPH STORY.

TO MR. WILLIAM W. STORY.

Washington, February 21st, 1836.

MY DEAR SON:

Since I have been here, I have contrived (by reading a half hour in the night and a half hour in the morning) to peruse the whole of Irving's *Life of Columbus*, in three volumes. It is quite an interesting work, though I think too much spread out by repetition of the same thoughts and descriptions. It is, in all respects, however, reputable to the literature of our country. But it also proves, and sadly proves, (what I have ever believed) that the Europeans were always the aggressors of the natives in America, in all their contests, and that the sins of all the murders and desolations on these shores, are attributable to their baseness and avarice and detestable passions. I never think on the subject without bitter regrets and undisguised indignation.

Your account of the new Bank Bills I give you credit for. The pun is very good, and I had a hearty laugh at it. It is the first time that I ever happened to pass current in the money market. And there is not now the slightest danger but I shall pass for more than I am worth, though I shall be in such good company as President Quincy.

The poor Indians! they will soon be exterminated in Florida, where the war is now waging. On their part it is now a desperate struggle for existence; and I have no doubt but they will all perish in the contest. In the course of a few years, not a relic will be found in all America of this heroic race. Their history will be lost in uncertain traditions. The white man will tell the story of their disappearance in his own way. Give my love to your mother and Mary,

And believe me,

Very affectionately yours,

JOSEPH STORY.

“The new Bank Bills,” alluded to in this letter, were issued by the Charles River Bank, of Cambridge ; on one side of them was an engraved head of my father, and on the other side a head of President Quincy.

The interests and engagements of this year are touched upon in the following letters : —

TO DOCTOR FRANCIS LIEBER.

Cambridge, April 10th, 1836.

MY DEAR SIR :

I hope you will not set me down as the worst of all possible correspondents, because I have not before answered your letter. If you do, however, I have no right to complain, although I have a complete defence. The fact is, that I am constantly engaged in writing for the press my new and second volume on Equity, and my progress against the printer's devil and all his imps is necessarily slow. Think of this ; that I have published a volume of six hundred and ninety pages last year, and am to write another of the same size this year. Besides, I have a crowded correspondence of all sorts ; and am like a miller, compelled to wait and give each his turn at the mill in due order. . . .

As to the right, as it is called, of instruction, we in New England do not admit the doctrine at all ; at least, all our sound statesmen reject it as unconstitutional. Mr. Burke, in his address to the electors of Bristol, stated the general principle with great force and correctness. Mr. Giles, of Virginia, in a long address to the Virginia Legislature, in or about 1812, denied it, and reasoned the arguments against it forcibly. I deem the right of instruction, under our constitutions of Government, utterly unfounded. It is nowhere given ; it is by implication (as I think) denied. . . .

Most truly and faithfully, your friend,

JOSEPH STORY.



TO RICHARD PETERS, ESQ.

Cambridge, May 7th, 1836.

MY DEAR SIR:

On my return from my Eastern Circuit, I received your letter of the 29th instant. I am sorry to say that some of your manuscript (like my own) is so illegible that I have not been quite sure that I have gotten the sense of several important passages.

In respect to the duty of a reporter, I have always supposed that he was not a mere writer of a journal of what occurred, or of a record of all that occurred, or of the manner and time in which it occurred. This duty appears to me to involve the exercise of a sound discretion as to reporting a case; to abridge arguments, to state facts, to give the opinions of the Court substantially as they are delivered. As to the order in which this is to be done, I have supposed it was a matter strictly of his own taste and discretion, taking care only that all that he states is true and correct, and that the arrangement is such as will most readily put the profession in possession of the whole merits of the case, in the clearest and most intelligible form.

In regard to the statement of facts, I have always thought the best method to be, where it could conveniently be done, to give the facts at the beginning of the case, so that the reader might at once understand its true posture.

If the Court state the facts, the true course is, to copy that very statement, because it is the ground of the opinion, and to remove it from the place in the opinion which it occupied, (taking notice that it is so removed and used) and then proceed to give the rest of the opinion in its proper order, after the argument. Upon any other plan, either the reporter must make a statement of facts of his own, which it seems to me would be improper, or repeat the statement of facts by the Court, which would be wholly useless, and burthen the volume with mere repetitions. This course has been constantly

adopted by the reporter of my Circuit Court opinions, and I have always approved it. I believe that it is adopted by all the best reporters, both in England and America. If I were a reporter, I should think it my duty to adopt it, unless expressly prohibited from so doing. Wherever it is not done, there is (to be sure) a much easier labor for the reporter, but his reports always wear a slovenly air.

As to the correction of verbal and grammatical errors in an opinion, I can only say for myself, that I have always been grateful for the kindness of any reporter of my opinions, for doing me this favor. Verbal and grammatical errors will occasionally occur in the most accurate writers. I have found some in my own manuscript opinions, after very careful perusal, and have not detected them until I saw them in print. I think it would be a disgrace to all concerned, to copy gross material and verbal errors and mis-recitals, because every one must know that they would at once be corrected, if seen. They mar the sense and they pain the author. So, the occasional change of the collocation of a word often improves and clears the sense. If a reporter do no more than acts of this sort, removing mere blemishes, he does all Judges a great favor. I do not believe any good reporter in England or America ever hesitated to do so. This is my opinion. Other persons may think differently from me, but I have ever supposed this a part of the appropriate discretion of a fair and accomplished reporter. You will find that Lord Coke thought very much as I do on this subject, if you will look on the 4th page of his report on Calvin's case, (7 Co. Rep. 4,) where he states the duty of a reporter. Douglas, in his preface to his Reports, (p. 12, 13,) adopts an equally correct method. Yet who ever excelled him as a reporter?

I write you in a press of business, and have not time to say more. The other topics of your letter I shall take another occasion to speak about when I shall be more at leisure.

Yours, most truly and affectionately,

JOSEPH STORY.

TO MISS HARRIET MARTINEAU.

Cambridge, July 22nd, 1836.

MY DEAR MISS MARTINEAU :

Mrs. Farrar has done me the favor to say, that she will take a letter from me for you, on her departure for New York and thence to England. I avail myself of her kindness to say a parting word to you, for now I begin to realize that you will soon be on the bounding billows, and far away on the shores of dear old England. Within a few days last past I have received from your brother a copy of his new work, entitled, "The Rationale of Religious Inquiry." I know not whether you have seen it or not, but I suppose not, as it came only by the last arrivals to America. The title is awakening; for in how few instances has the Rationale guided religious criticism or religious research? The work is full of his characteristic modes of thinking; bold, free, acute, and warm in its coloring. He has done what few men venture on; he has stated the real questions in a frank and fearless manner. As yet, I have found time only to run over the pages in a cursory and hurried manner, for the Law term is but just closed, and I have been wedged in by double labors on every side. But I have read it well enough to admire its spirit and to be edified by its clear and forcible reasoning. Pray thank him for it in my behalf in your own best manner, and none I am sure could be more grateful to him or to me.

I have been daily expecting the eleventh volume of Sparks's Washington, but it is not yet out; if it comes out before you leave us, it will reach you at New York by some private hand. The second volume of my work on Equity is already far advanced, five hundred pages being printed. Nearly all of it has been written since my return from Washington, so that you may easily understand that I have not been engaged in strenuous idleness. . . .

We are leading a very quiet life in Cambridge and its vicinity since you left us. Indeed, the unvaried round of duties in academical life leaves little leisure for social intercourse, and in my case at least, necessarily withdraws my thoughts from all things not exclusively professional. You know that Dr. Ware, Jr. was very ill in the spring; he is better now, though I do not think his health firmly established. . . .

Pray remember me to Miss Jeffery.

I am affectionately your friend,

JOSEPH STORY.

TO HON. EDWARD EVERETT.

Cambridge, August 10th, 1836.

MY DEAR SIR:

I need scarcely say how truly I thank you for the copy of your Orations and Speeches, recently published, in a good, fair volume. Most of them I read at the time they were first printed, with great pleasure, and I rejoice that they are now collected in a durable form. Your labors have given a new character to our occasional orations, and elevated them in the rank of intellectual efforts. Your success in this department has been as evident as it has been undisputed. To no one has the palm of superiority been awarded by the public over you; and few indeed are those who have been admitted to the claim of rivalry. I am proud to place the volume in my library as a gift from you.

Believe me, with the highest respect,

Very truly yours,

JOSEPH STORY.

In the case of the *Commonwealth v. Aves*, (18 Pick. R. 211,) referred to in the next letter, it was held that if the owner of a slave in a State where slavery is established by law, voluntarily brings him into Massa-

chusetts, he cannot detain the slave against his will, or carry him out of the State without his consent. In the judgment pronounced by Chief Justice Shaw, it is declared that "slavery is contrary to natural right, and to the principles of justice, humanity, and sound policy," and that it cannot exist in the Commonwealth of Massachusetts.

TO ELLIS GRAY LORING, ESQ.

Cambridge, November 5th, 1836.

MY DEAR SIR :

I am very much obliged to you for the copy of the printed case of *Commonwealth v. Aves*, which you have had the kindness to send me. It is a very interesting and important case, and I have read the arguments and the opinion of the Court with very uncommon attention. They are every way worthy of the cause, of the counsel, and of the Court. I have rarely seen so thorough and exact arguments as those made by Mr. B. R. Curtis, and yourself. They exhibit learning, research, and ability, of which any man may be proud.

It would not become me to express any opinion in the case; as it may be, that the very points may be brought before the Supreme Court of the United States for a final adjudication. But I owe it in justice to you to say, that highly as I have ever held your talents, the present argument has increased my respect for them.

With many thanks,

I am truly and respectfully,

Your obliged friend,

JOSEPH STORY.

The following letter from Mr. Justice Vaughan was in acknowledgment of a copy of the work on *Equity Jurisprudence*, and of the *Miscellaneous Writings*:—

TO HON. JOSEPH STORY.

Regent's Park, London, February 22d, 1837.

DEAR MR. JUSTICE STORY :

I find it difficult to express, in adequate terms, the grateful sense I entertain of the obligation you have conferred on me by doing me the honor to present to me a complete copy (the second volume having been received) of your admirable Commentaries upon Equity Jurisprudence, as administered in England and America. After the partial devotion of your valuable life to the study of what you are pleased to call the first of human sciences, and amidst a series of labors which might have appalled Hercules, you have succeeded most happily in developing a very complicated subject, in beautifully illustrating it by the most approved cases, and by the order and arrangement of its various parts, have rendered it easy and familiar to any ordinary mind accustomed to the vigorous exercise of its faculties.

If the founder of the Dane Professorship of Law in Harvard University had lived to witness the rich harvest which has been reaped, by the sweat of your brow, from his liberal endowments, he must have reflected, with the sweetest satisfaction, on having been the instrument, under Divine Providence, of improving the condition of society, by maturing the growth and diffusion of so much valuable knowledge amidst the civilized portions of the globe.

You have indeed, my dear sir, been a great benefactor to mankind, and notwithstanding the observation of Shakspeare, that "the evils which men do live after them, the good is often interred with their bones," I venture to predict, without being gifted with the spirit of prophecy, that your *good* works will live after you, and that your value will be enrolled, and your memory embalmed in the grateful recollection of the present age, and of successive generations yet unborn. Pray forgive this honest expression of my feelings.

Your Miscellaneous Writings have been a source of the purest pleasure to me, and your address at the consecration of Mount Auburn, which I read when recovering from a very long and serious illness, inspired me with feelings of affectionate respect for the author of it, which time will find it difficult to efface.

Yours, &c.,

J. VAUGHAN.

On the reception of the second volume of the work on Equity, Chancellor Kent thus writes:—

TO HON. JOSEPH STORY.

New York, April 18th, 1837.

MY DEAR SIR:

I owe you an apology for omitting hitherto gratefully to acknowledge the receipt of the second volume of your Commentaries on Equity, and the pamphlet on the Charles River Bridge case. They have both been read by me attentively; the first, not every word of every page, for to a person of my advanced life, and retirement from the Bar, it cannot be expected that I should wish to load my mind *de novo* with all the numerous and refined distinctions on many of the heads you discuss. My attention has been drawn to every thing that was the subject of special criticism, or of the more interesting kind, and the least technical and dry. The work denotes your usual labor, accuracy, and learning, and is a most valuable digest of Equity law to judges and lawyers, both here and at Washington. The Bridge case I read as soon as I received it, to the end of the opinion of the Chief Justice, and I then dropped the pamphlet in disgust and read no more. I have just now finished your masterly and exhausting argument. . . .

Be assured of the highest respect, esteem, and attachment of

Your friend and obedient servant,

JAMES KENT.

The following letter from Sir Edward Vaughan Williams, of the Court of Common Pleas, and author of the able work on Executors, refers to this work : —

TO HON. JOSEPH STORY.

2 Inner Temple Lane, London, October 2d, 1839.

DEAR SIR:

I fear you will have considered me as both rude and ungrateful, in not having acknowledged your letter received more than a year ago. The truth is, that I felt a difficulty in doing so, because, by some mistake, two of the volumes of the works which you mentioned your kind intention of sending to me, did not reach me till lately. I found them on my return from the last circuit; and I now beg to express to you my warm thanks, and to assure you, with great sincerity, that no present I ever received gave me greater gratification.

It would be impertinent in me to mention to you, whose name has been so long known as one of the foremost in the learning of our profession, the high respect which I, in common with the rest of the lawyers of Europe, feel for your great talents and acquirements. But I may be allowed to say, that nothing has occurred, in the course of my professional life, which I regard with so much pride, as to have received a letter of commendation from such a man.

I have the honor to be,

With the truest regard and esteem,

Your most obliged servant,

EDWARD VAUGHAN WILLIAMS.

After winning all these cups, my father was restless when off the course. A passage in the following letter, relating to the Treatise on Equity Jurisprudence, will show the large plan which he had proposed for himself as an author. Not content with fulfilling the duties ori-



ginally laid down by Mr. Dane, he determined to press far beyond their limits, and not to rest until he had written at least twelve treatises on various subjects in the law. With all his previous labor, he had achieved but little more than half his plan.

TO REV. JOHN BRAZER.

Cambridge, November 10th, 1836.

MY DEAR SIR:

I am greatly obliged to you for your kind letter, and especially for those expressions of interest and friendship for me, of which I am proud, and on which I ought to place a high value. To me it is a severe loss to be precluded from the opportunities of meeting you at your quiet fireside and my own, and of talking over those topics upon which so much of our past lives has been so pleasantly employed. As I grow older, I find the sphere of my friendships necessarily grows more narrow, and I have hardly the courage to attempt to widen it. Every loss of an old friend, by being far removed from him, brings more and more regrets to me, unavailing indeed, but still not less felt on that account.

I am glad that your Review has brought to my knowledge the name and the writings of Gambold. I was before wholly ignorant that such a person had existed. The specimens you have presented of his writings, give me a high opinion of his genius, and there are occasional flashes in his poetry, of great brilliancy and power. The "Mystery of Life" contains some exquisite touches, and cannot but recall to every man, who has indulged in musings beyond this sublunary scene, some of those thoughts which have passed before him in an unearthly form, as he has communed with his own soul. But I am also greatly gratified with the tone and character of the Review itself. It is in good taste throughout, with a spirit of candor and close discrimination, and appropriate and elevated remark, such as it rarely falls to my lot to find in those things

miscalled "Reviews." It is delightful to see a divine of one sect counting it not a task but a pleasure to bring out the merits and the beauties of another mind, of a widely different sect, instead of seeking to magnify and censure the differences which divide them. How greatly I should rejoice, if theologians generally could be, I do not say, thus tolerant, but just to each other. I think your Review will be, as it ought, generally admired.

I shall immediately speak to Mr. Sparks on the subject of a memoir of Dr. Holyoke, but of course, I shall address him *ex mero motu*. I do not know any one more worthy of a place in his series of biographies, whether from the purity of his life, or the excellence of his example. There is no one but yourself who is at all qualified to write the memoir, and without pretending to guide his choice, I shall certainly recommend an application to you. . . .

I have just completed the second volume of my work on Equity Jurisprudence, a work of 748 pages of text, and about 80 more of context. It has cost me very great labor, and has been an exhausting task. I can only hope it may in any wise accomplish its object, the education of students in the great doctrine of Equity, a subject of almost infinite complexity and variety. If my life should be spared a few years longer, I hope to be able to complete the entire series of works which I contemplate, on various points of the law. I have now published seven volumes, and, in five or six more, I can accomplish all I propose. I have now no other desire, than to give my remaining years to the science of jurisprudence. I have no ambition for public life, and pant for the time when I may hope to retire from my judicial position, which now presents to my mind many dark and saddened recollections.

Mrs. Story sends her love to Mrs. Brazier, in which I join, being very affectionately your and her friend,

JOSEPH STORY.

During this year, my father, in connection with Hon. Theron Metcalf, Hon. Simon Greenleaf, Charles E. Forbes, Esq., and Luther S. Cushing, Esq., was appointed by Governor Everett, as a Board of Commissioners, under the resolve of the Legislature of Massachusetts, "to take into consideration the practicability and expediency of reducing to a written and systematic Code, the Common Law of Massachusetts, or any part thereof, and to report thereon to the next Legislature, subjoining to their report, a plan or plans of the best method in which such reduction can be accomplished." My father was made chairman of the Board, and drew up an elaborate report, advocating the reduction of certain portions of the Common Law to a written and systematic Code, in which the principles clearly established by the Courts should be enunciated with precision. His views on this subject, which were first put forth in the article, "Codification," furnished by him for the *Encyclopædia Americana*, are more fully expressed in this report, and are argued with great clearness and vigor. After considering the present condition of the Common Law, he goes on to say, —

That the practicability of codifying the Common Law, "involves, or at least may involve, two very distinct and widely different propositions, according to the sense in which we interpret the terms, 'the Common Law of Massachusetts.' If by those terms is to be intended not only all the general principles of that law, but all the diversities, ramifications, expansions, exceptions, and qualifications of those principles, as they ought to be applied, not only to the past and present, but to all future combinations of circumstances in the business of human life, it may require one answer. If, on the other hand, those terms are to be understood in a more restricted

sense, as importing only the reduction to a positive code of those general principles, and of the expansions, exceptions, qualifications, and minor deductions, which have already, by judicial decisions or otherwise, been engrafted on them, and are now capable of a distinct enunciation, then a very different answer might be given. In the former sense, the Commissioners have no doubt, that it is not practicable to reduce the common law of Massachusetts to a written code ; in the latter sense, they have no doubt, that it is so practicable ; — and the expediency of doing it will come under review in a subsequent part of this Report.”

After insisting that the first proposition is wholly inexpedient and impracticable, the arguments against it are thus summed up : —

“ It is obviously impossible to make a positive code, which shall be adequate to the business and rights and modifications of property in any one single age, unless the Legislature can foresee every possible as well as every probable combination of circumstances applicable to every subject-matter in that age. Such a degree of wisdom and foresight belongs not to any human beings. If it were possible to foresee and provide for all such exigencies of a single age, having a determinate course of business, and institutions, no one would be rash enough to assert, that it was possible to foresee and provide for the exigencies, rights, duties, and business of the same nation throughout all time. A code, therefore, however full, would be perpetually growing more and more defective, unless resort should be had to new legislation ; and such legislation, to be either wise or effective, must allow a great number of cases of the same sort to arise under various aspects, before the proper remedy or principle, which ought to be generally applied, could be clearly perceived, or safely adopted. In short, unless it were possible to compel all men to act at all

times in one way, and to prevent the occurrence of any new combinations of circumstances, (a condition morally and physically impossible,) and unless it were also possible for a legislature to foresee and provide for all the cases, that had arisen, or could arise, (a condition equally impossible,) there is no pretence to say, that any written code could embrace all the provisions fitted for an active, commercial, and free people, advancing in civilization, wealth, and industry. And if any code could be framed, which should aspire to provide in detail for the common run of circumstances, it would be found in practice to be not only materially defective, but so voluminous in its precepts, that a whole life would be required to master all its provisions, and more than a whole life to accumulate the materials fit for its composition.

“ It has been already stated, that perhaps not one case in a hundred, which admits of doubt or controversy, ever comes before a court of justice for decision. Of the reported cases, which were decided in England before the middle of the last century, consisting principally of cases at the common law, an abridgment has been published in twenty-four folio volumes; and, after all, it is a very unsatisfactory and incomplete abridgment of those cases, probably not covering one half of the minute doctrines asserted and acted on in them. An abridgment of the reported cases at the common law, from that time down to the present, has also been published in fifteen volumes (royal octavo) which is equally imperfect and unsatisfactory. These voluminous works are but specimens of what a code must be, which should attempt to enumerate in detail the doctrines of the common law, which have been in dispute in courts of justice, and have been established by decisions. If the enumeration of these is so voluminous, we may readily see, what space would be required for those, which are known and not disputed, and for those, which are unknown, or uncertain in their application, and whose circumstances have never been discussed in tribunals of justice. A code, which should embrace the doctrines of all the reported,

cases of the common law, from the most important to the most minute, with accuracy and clearness, would of itself be exceedingly voluminous, and require many years, if not an age, for its preparation, and then would be mastered only by those, who could afford to devote a large portion of their lives to the study and exposition of it. For the purposes of common life, it would be like a sealed book, which would neither enlighten nor aid practical inquirers, and perhaps by a partial examination might mislead them. But if a code should attempt more, and be framed so as to comprehend, in all their details, all the known and undisputed doctrines of the common law, which on that account are only incidentally touched or alluded to in reported cases, it would probably be doubled in its bulk and extent. If it should attempt to go farther, and provide for the application of those doctrines to all other cases, which had arisen and were known, or which could be foreseen by the exercise of the most profound and varied wisdom and experience of the Commonwealth, it would not only be found upon its first promulgation exceedingly defective, but it would be of such vast size and accumulated materials, that it would serve to perplex rather than to clear away difficulties, and would import into the administration of justice more mischiefs and doubts, and stimulants to litigation, than it could hope to remedy. There would be this additional evil, that as the rules established for future cases would necessarily be founded upon general theories, and would not, as now, be adopted upon full argument, and modified from time to time, to meet the circumstances of each particular case, there would be infinite danger, that they would in practice be found to work ill, or to defeat the main objects, which the legislation was intended to accomplish."

In arguing the expediency of carrying out the latter proposition, he says, —

" In respect to the general principles of the common law of

Massachusetts, it may be affirmed, that they are not positively incapable of being generally collected into a code. We say generally, because there may still be some question, whether particular principles of the common law of England constitute a part of the common law of Massachusetts. But in relation to a very large mass, there is no difficulty whatsoever of this nature. These general principles are to be found, for the most part, collected in elementary treatises now extant, upon the whole or particular branches of the common law. They are capable of being stated in the very form and language, in which they are there enunciated, as they have, from long examinations and critical trials, acquired a precision and exactness, which approach very near to scientific accuracy; and for all the ordinary uses of life, they are sufficiently clear in their interpretations and qualifications. To this extent, at least as far as these general principles have assumed such a precision and exactness, they may be embodied in a written Code, with such a systematic arrangement, as the nature of the different subject-matters, to which they apply, may require.

“In respect to the details of these general principles in their actual application to particular cases, where they have necessarily undergone modifications, exceptions, and qualifications, as they are chiefly, if not exclusively, to be gathered from actual adjudications in courts of justice, it may also be affirmed, that they are not positively incapable, so far at least as reported cases go, of being generally reduced to a written code. We say generally, because here also there are, or may be great doubts, whether particular doctrines constitute a part of our common law; and because there are to be found conflicting decisions upon some points, so that it may not be easy to affirm, upon the weight of authority, what the true doctrine is; and because some branches of the common law of England have become so nearly obsolete, and so obscure from lapse of time and disuse, that, if they constitute a part of our common law, it would be very difficult to collect all the true doctrines, and to express them in an unexceptionable

form. Time here, as everywhere else, has wrought such great changes in rights, remedies, institutions, and usages, that it would be almost a hopeless task to suit the ancient forms and the ancient language of particular doctrines to the present state of things. It is quite a different question, which will be presently considered, whether it would be useful or expedient, to attempt any codification of all the details of these general principles, as they are embodied in the decisions, which have been made by courts of justice in different ages."

The following propositions are stated, as the result of the deliberations of the Commissioners : —

"1. The Commissioners are, in the first place, of opinion, that it is not expedient to attempt the reduction to a code of the entire body of the Common Law of Massachusetts, either in its general principles or in the deductions from, or the applications of those principles, so far as they have been ascertained by judicial decisions, or are incontrovertibly established.

"2. The Commissioners are, in the next place, of opinion, that it is expedient to reduce to a code those principles, and details of the Common Law of Massachusetts in civil cases, which are of daily use and familiar application to the common business of life, and the present state of property and personal rights and contracts, and which are now so far ascertained and established, as to admit of a scientific form and arrangement, and are capable of being announced in distinct and determinate propositions. What portions of the Common Law properly fall under this predicament will be in some measure considered hereafter.

"3. The Commissioners are, in the next place, of opinion, that it is expedient to reduce to a code the Common Law, as to the definition, trial, and punishment of crimes, and the incidents thereto.

"4. The Commissioners are, in the next place, of opinion,



that the law of evidence, as applicable both to civil and criminal proceedings, should be reduced to a code.

"And, in order to guard against any objections founded upon a misconception of the nature, objects, and effects of such a codification, the Commissioners propose to insert in such a code the following fundamental rules for its interpretation and application.

"1. The code is to be interpreted and applied to future cases, as a code of the Common Law of Massachusetts, and not as a code of mere positive or statute law. It is to be deemed an affirmance of what the Common Law now is, and not as containing provisions in derogation of that law, and therefore subject to a strict construction.

"2. Consequently, it is to furnish the rules for decisions in courts of justice, not only in cases directly (*ex directo*) within its terms, but indirectly, and by analogy in cases, where, as a part of the Common Law, it would and ought to be applied by courts of justice, in like manner.

"3. In all cases not provided for by the code, or governed by the analogies therein contained, the Common Law of Massachusetts, as now existing, is to furnish the rules for decision, unless so far as it is repugnant to the Common Law affirmed in the code, or to the statute law of the State."

The Report goes on to state the objections which have been urged against codification, and triumphantly answers them. It then proceeds to recount its advantages with great clearness and force, and recommends that the labors of codification should be specially devoted to these three branches of the law.

"1. That which respects the civil rights, capacities, and duties of persons, considered by themselves, or in their social and other relations to other persons; and the remedies resulting from those rights, capacities, and duties. 2. That which

respects the rights and titles to real and personal property, and the incidents thereto, and the remedies, by which they are protected and vindicated. 3. The rights, duties, and claims arising from contracts, in the largest sense of that term, comprehending express contracts, such as bonds and obligations, conditions, conveyances, covenants, and other positive stipulations between parties competent to contract; and implied contracts, which result by operation of law, either from the implied consent and intentions of the parties, or from the dictates of natural justice in furtherance of right, or in suppression of wrong. Connected with this branch necessarily is the consideration of the remedies applicable to the various kinds of contracts; some of which stand upon principles purely technical, and others again upon principles of a more general nature." . . .

"But," he says, "it is principally in the third and last class, that the Commissioners are of opinion, that the benefits of a code will be most extensively felt, and in which the task may be performed with the greatest certainty of success. It is true, that some branches of the law of contracts contain rules and principles of a technical and artificial nature, not well adapted to the modern exigencies of society. Examples of this sort may be found in the law applicable to obligations, conditions, covenants, and certain classes of conveyances. But, in general, the law of contracts may be affirmed to be founded in sound sense, and adapted to the ends of social justice. Especially may this be affirmed of the law of contracts, which has been developed and established within the last century. Even the law of contracts, applicable to the old forms of obligations and covenants and conveyances, has been, by the cautious expositions of great judges in different ages, reduced to a high degree of certainty. But commercial contracts are eminently entitled to be deemed in this predicament; and under the forming hands of a succession of learned judges and jurists for the last century, they have attained a scientific precision, and accuracy, and clearness, which give

them an indisputable title to be treated as a fixed system of national jurisprudence. In regard to commercial contracts, it may be affirmed without hesitation, that the general principles which define and regulate them, and even the subordinate details of those principles, to a very great extent, are now capable of being put in a regular order, and announced in determinate propositions in the text of a code. Among these contracts, the Commissioners would especially recommend as the subjects of a code the following titles, namely: the law of agency, of bailments, of guaranty, of suretyship, of bills of exchange, of promissory notes, of insurance, and of partnership. They would also recommend, in like manner, the law of navigation, and shipping and maritime contracts, including therein the law respecting the rights, duties, and authorities of owners and part owners, and masters, and seamen, and shippers, and passengers; the law of bottomry, of charter-parties, bills of lading, and other contracts of affreightment, including therein the law of freight; and the law of general average, of salvage, and of seamen's wages. These branches of commercial and maritime law are not only capable of being put into the form of a positive text, but of being condensed into a text of a comparatively small extent. It is not too much to affirm, that the whole law of insurance, as far as it has been ascertained and established by judicial decisions and otherwise, may now be stated in a text not exceeding thirty pages of the ordinary size of octavos. In point of fact, it is embraced in the commercial code of France in less than half that space; and most of the principles of that part of the code are the same as those of our law.

“In the next place, the Commissioners are of opinion, as indeed they have already intimated, that the Common Law, as to crimes and punishments, and the incidents thereto, admits of being generally reduced to a code with accuracy and precision. If it can be done, it seems to the Commissioners, that the public at large have a right to claim from the Legislature that it shall be done. One of the most obvious dic-

tates of reason is, that public crimes, which are to affect every citizen, should, as far as practicable, be made known to all. It is wholly unnecessary for the Commissioners to expound the importance of this truth, as it cannot well escape the notice of every intelligent legislator. It is fortunate, that in the present state of the criminal law, there is so much certainty as to the nature and punishment of crimes, at the Common Law, and the incidents and modes of proceeding therein, that it will not be found a very difficult task, to reduce most of the important doctrines and rules to a positive text.

“Connected with these extensive branches of the Common Law, both civil and criminal, there remains the grave subject of the law of evidence, involving not merely questions respecting the competency and credibility of testimony, but the general rules for the admissibility of written and parol evidence on particular issues. Owing to the invaluable labors of the eminent judges of the last half century, this subject is now, with a few unimportant anomalies, capable of a scientific arrangement and determinate exposition, in its general principles, and in many of its most useful details. The rules of evidence have been truly said to constitute the best, if not the only real security for the lives, the personal rights, and the property of all our citizens; and, therefore, the knowledge of them is of infinite moment to the public, as well as to the profession. Any code, which does not embrace them, must be pronounced to be in its very constitution radically defective. The Commissioners, therefore, earnestly recommend the codification of the law of evidence, as among the first objects for the deliberation of the Legislature.”

The plan of codification was accordingly adopted in conformity with the recommendations in the report, and in the early part of the next year my father was invited to become the chairman of the Board of Commissioners

for the codification of the Criminal Law. In the following letter he declines to accept the appointment.

TO HIS EXCELLENCY, EDWARD EVERETT.

Cambridge, March 28th, 1837.

DEAR SIR:

I have reflected seriously on your kind proposal that I should be the chairman of the board of commissioners to be appointed on the codification of the criminal law. I am compelled, by a sense of duty, to decline the honor which would thus be conferred on me. Consistently with my judicial and professional engagements, I do not see how I can well spare the necessary time for such an important and interesting undertaking. With my most grateful acknowledgments for the favor thus intended me, I hope you will deem my reasons for declining the task to be satisfactory. . . .

Believe me, with the highest respect, truly yours,

JOSEPH STORY.

On the 8th day of September, 1836, the alumni of Harvard University celebrated the second centennial anniversary of its foundation. The occasion, which was most interesting in its nature, drew together a great number of graduates from all parts of the country, who, after listening to an admirable oration pronounced by the Hon. Josiah Quincy, the President of the University, proceeded to an enormous pavilion erected in the college grounds, and there partook of a dinner. This pavilion, which covered an area of nearly eighteen thousand square feet was spread with white canvas, that sloped in successive terraces from a central pillar sixty-five feet in height, from which the college flag waved with its motto of *Veritas*. The scaffolding of these terraces was supported in the interior by forty-four pillars, which were

wreathed with flowers and evergreens, while pendants and streamers radiated from the centre to the sides of the tent. The pavilion was placed on a slope, so that the tables rose one above the other in the form of an amphitheatre, while an elevated platform, on the lowest part of the area, was appropriated to the President and Vice-President of the day, and the distinguished guests. More than fifteen hundred persons sat down to this table, of all ages, from the octogenarian graduate of sixty years back, to the youth of yesterday, and after the serious demands of the appetite were satisfied, a number of eloquent speeches were made, which were received with enthusiasm. Among them that of my father will here be interesting, as showing the peculiar manner of his extempore dinner speeches, of which this is a fair specimen. As he never prepared his speeches, nor wrote them out after they were spoken, but few remain, and those are very imperfect. This was not written out by him, but was taken down by the reporter as it fell from his lips. In answer to the following toast (alluding to Hon. Nathan Dane): "The memory of him who added a Seminary of Law to the School of the Prophets; a structure of immortal fame has been reared on his foundation," — my father spoke as follows:

"Mr. President, I rise with unaffected diffidence to address you on the present occasion, and to return thanks for the toast just announced from the chair. The novelty of the circumstances under which we are assembled, as well as my own unexpected position at this moment, place me in a state of great embarrassment. In the first place, if invited here as a member of the Corporation of Harvard College, I had consoled myself with the reflection, that a matter of law would

be my especial protection for an unbroken silence. I think that my Lord Coke has somewhere told us, and at all events the doctrine is assuredly as old as his day, that a corporation has no soul; nor has it any natural body; but only an artificial existence, or legal entity; so that it cannot manifest its intentions by any personal acts or oral discourse, and therefore it can act and speak only under its common seal, or at all events through its acknowledged living head; and through that head our Corporation has already powerfully and eloquently spoken this day. But although I have hitherto had great confidence in the law, as on my side, it seems that it has failed to be my security in the present emergency.

“In the next place, I had placed equal reliance upon a matter of fact. I came here with the distinct understanding, that on this most interesting anniversary, all of us should move in procession, and take our places at the tables, in the order of our respective college classes; and well I knew, that, as a member of the class of 1798, in the midst of that phalanx, I should be secure from all intrusion from without, so that I might comfortably say, with honest John Falstaff, ‘Shall I not take mine ease in mine own inn?’ But here, again, I have been mistaken in the matter of fact; for the place from which I now address you, abundantly proves, that the move and the remove have been greatly to my disquiet. In short, sir, I am in the same unhappy predicament here, in which many poor gentlemen find themselves in some other places, with a total failure of matter of law and matter of fact for my justification or defence, touching the demand for a speech.

“But, not to trouble you with any further apologies, allow me in a graver tone to say, that few occasions could be of more deep and permanent interest than the present. When I look around me, and see the numerous assemblage of students and alumni who grace this celebration, I cannot but feel a lively sensibility and unaffected gratitude, in being permitted to witness such a scene, under such auspices. I can-

not turn my eyes towards the neighboring collegiate halls and academical shades, without the most touching reminiscences of former days passed there, in the season of gay and unsuspecting youth. I realize in its full force the beautiful language of the poet:—

‘I feel the gales, that from ye blow,  
A momentary bliss bestow,  
As, waving fresh their gladsome wing,  
My weary soul they seem to soothe,  
And, redolent of joy and youth,  
To breathe a second spring.’

“Many of the topics, which naturally crowd upon the mind under such circumstances, have already been in a great measure exhausted in the excellent address to which we have just listened from the chair, and in the elaborate and powerful discourse, which occupied our attention in the morning. At this late hour, I have little to add to what has been so well discussed in them. My worthy friend who last spoke (the learned Dean of the Faculty of Divinity) has placed before us the labors and services of the Puritan clergy in establishing and protecting and aiding this University, in their true light. He has but done them the justice of bestowing warm praise upon their prompt zeal, their untiring fidelity, and their constant devotion to its interests. It was founded by them for the cause of religion and truth; and I trust it will forever remain steadfast and immovable in that cause.

“In regard to the complimentary notice of the Law School of the University, in the toast from the chair, I cannot but receive it with a deep consciousness of the kindness which dictated it, and of the small claim that I have to appropriate to myself personally the commendation which it implies. No one appreciates more fully than myself the general importance of the study of the law. No one places a higher value upon that science, as the great instrument by which society



is held together, and the cause of public justice is maintained and vindicated. Without it, neither liberty, nor property, nor life, nor that which is even dearer than life, a good reputation, is for a moment secure. It is, in short, the great elastic power which pervades and embraces every human relation. It links man to man by so many mutual ties, and duties, and dependencies, that, though often silent and unseen in its operations, it becomes at once the minister to his social necessities, and the guardian of his social virtues. No one, therefore, can hold in more reverence than myself, the memory of that excellent man, the founder of the Professorship which I have now the honor to hold, whose bounty is worthy of all praise; for its noble object is to inculcate, through all generations, the doctrine of the supremacy of the constitution and laws. But, although I am conscious of my own inability to carry into full effect his admirable design, I trust that it will not be thought presumptuous in me to indulge the hope, that there may hereafter be found, among the pupils of this school of jurisprudence, some master spirit, who will task himself to its accomplishment, and thereby secure to himself and the school an enviable immortality. To such a one I would say,

‘Bate not a jot  
Of heart or hope; but still bear up, and steer  
Right onward.’

“But I confess that my thoughts have been led in a somewhat different direction from that of the law by the festivities of this day. The very spot where we are assembled is consecrated by a thousand endearing associations of the past. The very name of Cambridge compels us to cast our eyes across the Atlantic, and brings up a glowing gratitude for our unspeakable obligations to the parent University, whose name we proudly bear, and have borne for two centuries. To her we owe many of our earliest scholars and best benefactors, many of our civil rulers and our ecclesiastical leaders.

They nursed our infant institution in their bosoms. They cherished the cause of letters and learning with a holy ardor and unconquered diligence, in this then scarcely reclaimed wilderness. They stamped the image of their own exalted piety and patient virtues upon their own age. They refined, while they animated, the strong lineaments of the Puritan character. They planted the precious seed, whose mature fruits we are now enjoying in a rich and luxuriant harvest. I do not say too much, then, when I proclaim, that we owe unspeakable obligations to the ancient and venerable University of Cambridge in old England. Let it be recollected, that there our pious founder, John Harvard, of glorious memory, received his education. There, also, our second President, Charles Chauncy, gathered the solid learning, which he so liberally bestowed upon his pupils here. There, also, the first three ministers of the first parish of our own Cambridge, the Rev. Mr. Hooker, the Rev. Mr. Stone, and the Rev. Mr. Shepard were matriculated, and in Emanuel College laid the foundations of that ample knowledge of things human and divine, which made them the ornaments of their own age, and the pride of succeeding generations. So numerous, indeed, was the class of educated men from this stock among our civil and clerical fathers, that it has been stated by one of our own historians, of almost unexampled minuteness and accuracy of research, that there were, as early as 1638, forty or fifty sons of that University dwelling in the sparse villages of New England, being one for every two hundred or two hundred and fifty inhabitants.

“ We may, therefore, indulge a just pride in claiming our kindred with and lineage from that University. Nor ought we to desire to trace back to any higher origin our instruction in literature and religion, or our love of science and liberty. That ancient University numbers among her sons some of the brightest names in the annals of British renown. Bacon, Milton, Newton, were her own. And where in the history, I do not say of England, but of the world, can we point to

men of more extraordinary genius, more profound attainments, more comprehensive researches, or more enduring fame? It seems scarcely the coloring of poetry to declare, that

‘They passed the flaming bounds of place and time,’

and saw

‘The living throne, the sapphire blaze,  
Where angels tremble while they gaze.’

“Mr. President, I will not detain you or the company any longer. I beg leave to offer as a toast,—

“Our Ancient Mother, the University of Cambridge in old England. ‘*Salve, magna Parens,—magna Virûm.*’”

A singular and characteristic indication of delicacy of feeling, is contained in the first of these two following letters:—

TO HON. JUDGE PITMAN.

Cambridge, November 29th, 1836.

MY DEAR SIR:

. . . I do not think that it would be discreet in you or me to attend any evening party during the pendency of a capital trial. It would look too much like indifference or lightness of feeling as to the result. I am, however, truly obliged to General Greene for his proffered hospitality. Such a case as we have to try is bad enough at best, and I should scarcely wish that ladies should be compelled to hear about it, or be reminded of it by our society.

Believe me, most truly, your obliged friend,

JOSEPH STORY.

TO HON. JAMES KENT, LL.D.

Cambridge, December 22d, 1836.

MY DEAR SIR :

I had the pleasure, a few days ago, of receiving your address before the Law Association of New York, for which I sincerely thank you. The testimony which, in the introductory remarks, you give as to the dignity and importance of the law, is doubly valuable from the right which you of all men have, to speak on such a subject, from your vast experience and brilliant career in it, and from the power and eloquence with which every topic is urged. But your sketches of the great lawyers, who have adorned the Bar and Bench of New York in your day, and who have departed to another and a better world, are to me not less interesting. Of Hamilton, in an especial manner, I admire your warm and characteristic eulogy. I have always believed that his title to renown was as great as you have portrayed it. I never knew him, but I have deemed him a giant among his contemporaries, of whom it might truly be said *toto vertice supra est*. I shall place this new discourse among my choice pamphlets, to be studied as well as read. I rejoice that you still continue to cheer and encourage the profession by your untiring labors in the high path of duty, and an unconquerable love of the law. . . .

My health is now good. For a day or two I was unwell with a severe cold; but I never was either dangerously, or even seriously ill.

With my truest regards to Mrs. Kent and your family, I pray you to believe me with the highest respect,

Very affectionately, your friend,

JOSEPH STORY.

## CHAPTER VI.

### PROFESSORIAL AND JUDICIAL LIFE.

CONSTITUTIONAL QUESTIONS AT WASHINGTON — "NEW YORK *v.* MILN" — "BRISCOE *v.* BANK OF KENTUCKY" — "CHARLES RIVER BRIDGE *v.* WARREN BRIDGE" — MR. WEBSTER'S OPINION OF THIS CASE — LETTERS RELATING TO IT — CONSTITUTIONAL VIEWS OF THE COURT — PROPOSES TO RESIGN — STRICTURES ON THE COMMENTARIES ON THE CONSTITUTION BY MR. JUSTICE BALDWIN — MEMBERS OF THE COURT — VIEWS ON INTERNATIONAL COPYRIGHT — LETTER ON LIEBER'S POLITICAL ETHICS — CORRESPONDENCE WITH MISS MARTINEAU ON HER "SOCIETY IN AMERICA" — LABORS OF THE YEAR — LETTERS FROM WASHINGTON — RIGHT OF THE UNITED STATES TO CEDE TERRITORY IN THE STATES — ILLNESS AND DEATH OF DR. BOWDITCH — PUBLICATION OF EQUITY PLEADINGS — NOTICES OF IT — ADDITIONAL LABORS — PUBLICATION OF AGENCY — ITS RECEPTION — LETTERS RELATING TO IT FROM MR. JUSTICE COLERIDGE, MR. JUSTICE PATTESON, G. J. BELL, ESQ., J. W. SMITH, ESQ., WILLIAM BURGE, ESQ.

In January, 1837, my father went to Washington, as usual, to attend the session of the Supreme Court. The principal cases tried at this term, were three involving questions of Constitutional Law, upon all of which he delivered dissenting opinions. The first was "*The City of New York v. Miln*, (11 Peters's R. 103,) involving the constitutionality of an act of the Legislature, "concerning passengers and vessels arriving in the port of New York." This law required, among other provisions, that the master of every vessel arriving at the port of New York, from any other State than New York, should

report the names, ages, and last legal settlement of every person on board, under a penalty. The questions were, whether this act was a regulation of commerce or of police; and if the former, whether it was unconstitutional or not—the latter question turning upon the point whether the clause in the Constitution conferring power upon Congress “to regulate commerce with foreign nations and among the several States,” gives exclusive jurisdiction to the United States, or concurrent jurisdiction to the States. The Court held, that the act was a regulation of police; and that if it were a commercial regulation, as it did not come in direct collision with any regulation of commerce actually made by Congress, it was constitutional. Upon both these questions, my father dissented; insisting that this act was a regulation of commerce, and that the power of Congress is exclusive, and not concurrent. The judgment is not very long, but it is very cogent and clear, and is stated by him to be in entire coincidence with the opinion expressed by Chief Justice Marshall upon a former hearing of the same case.

The next case is *Briscoe v. The Bank of the Commonwealth of Kentucky*, (11 Peters’s R. 257.) This was a question, whether the act of Kentucky, establishing this State Bank and authorizing it to issue bank notes in the usual form, was unconstitutional, as infringing the clause in the Constitution prohibiting the States from issuing “bills of credit.” The Court held (Mr. Justice McLean delivering the opinion) that the act was constitutional, and that to constitute a bill of credit, it must be issued by a State, and contain a pledge of its faith, and be designed to circulate as money. In his dissenting opinion, my

father goes into an elaborate historical review of "bills of credit" in the Colonies and during the Revolution, to prove that a bill of credit "signifies a paper medium, intended to circulate between individuals, and between government and individuals, for the ordinary purposes of society," according to the definition given by Chief Justice Marshall, in *Craig v. The State of Missouri*, (4 Peters's R. 426,) and that it is not essential that they should be a legal tender, nor that their circulation should be enforced by statutable provisions, nor that they should contain any express promise by the State to pay them, on which credit is given, nor that they should be issued directly by the State and in its own name. He also argues with great force, that as the charter in this case was for the sole benefit of the State, by whom all its officers were appointed and removed, and under whose direction the whole affairs were carried on, and as the State owned all the funds and securities of every kind belonging to the bank, — the bank was the mere agent of the State, and the fact that the notes were issued in its corporate name, did not at all prevent them from being an issue by the State on its credit, and therefore an unconstitutional issue. This opinion is very able and finished. There is a glow of conviction in its tone, and an animated warmth of expression, when vindicating the constitutional views of Chief Justice Marshall, which render it peculiarly interesting. It concludes with the following paragraph:

"I am conscious that I have occupied a great deal of time in the discussion of this grave question; a question, in my humble judgment, second to none which was ever presented

to this Court, in its intrinsic importance. I have done so, because I am of opinion (as I have already intimated) that upon constitutional questions the public have a right to know the opinion of every judge who dissents from the opinion of the Court, and the reasons of his dissent. I have another and strong motive; my profound reverence and affection for the dead. Mr. Chief Justice Marshall is not here to speak for himself; and knowing full well the grounds of his opinion, in which I concurred, that this act is unconstitutional, I have felt an earnest desire to vindicate his memory from the imputation of rashness or want of deep reflection. Had he been living, he would have spoken in the joint names of both of us. I am sensible that I have not done that justice to his opinion, which his own great mind and exalted talents would have done. But with all the imperfections of my own efforts, I hope that I have shown that there were solid grounds on which to rest his exposition of the Constitution."

The third case in this volume in which my father delivered a dissentient opinion on a question of constitutional law, is "*The Charles River Bridge v. The Warren Bridge*," (11 Peters's R. 420.) The circumstances of this case were as follows: The Legislature of Massachusetts, in 1650, granted to Harvard College the liberty and power to dispose of a ferry between Charlestown and Boston, over Charles River. Under this grant the College continued to hold this ferry until 1785, in which year, upon petition of Thomas Russell and others, stating the inconveniences of the transportation by ferry, and the public advantages of a bridge, and praying to be incorporated for the purpose of building a bridge over the place where the ferry then was, the Legislature passed an act incorporating a company, under the name of "*The Proprietors of the Charles River Bridge*," authorizing them



to erect a bridge and to take tolls for the space of forty years, to which term the charter was limited, and during which they were to pay £200 annually to Harvard College, in compensation for the income from the ferry, which was thus destroyed. The bridge was accordingly built, and opened June 17th, 1786. In 1792, its charter was extended to seventy years. In 1828, the Legislature of Massachusetts incorporated a company by the name of "The Proprietors of the Warren Bridge," authorizing them to erect another bridge over Charles River, distant from the former bridge sixteen rods in its commencement at Charlestown, and fifty rods at its terminus in Boston. This was accordingly done. The Warren Bridge, by the terms of its charter, was to expire in six years, and to become free. The question before the Court was simply, whether the second act of the Legislature of Massachusetts, incorporating this bridge, was in violation of the provision in the Constitution of the United States, declaring that "no State shall pass any law impairing the obligation of contracts." This again opened collateral questions,—as to the proper interpretation of a grant or act of the Legislature, and how far its exact words are to be extended by implication; as to the right of eminent domain, and the extent of sovereign powers to appropriate private property for public use; as to the powers of a legislature to make grants of exclusive franchises, and other minor questions, all of which are treated with an exhaustive wealth of learning.

My father's opinion in this case is one of the most powerful, close, and learned of all that he ever pronounced. And, indeed, this, with the judgments in the

Dartmouth College case, and in *Hunter v. Martin*, may be considered as his greatest efforts in Constitutional Law. The grasp and vigor of his mind are here eminently visible. The learning brought to the illustration of the question, the solid movement of the argument, and the comprehensive spirit in which the case is discussed, must command the admiration even of those who differ from its conclusions. It was received with warm approbation by the profession. The judgment of the Court was not generally deemed to be founded on satisfactory grounds, while the dissenting opinion of my father was fully approved by such men as Mr. Chancellor Kent, Mr. Webster, Mr. Prescott, and Mr. Mason.

Mr. Webster, in an argument in behalf of the Lowell and Boston Railroad Company, made in January, 1845, before a Committee of the Massachusetts Legislature, speaking of this case, said, —

“I cannot but consider the act of the Legislature in that matter and the decision which followed it, as unhappy, unfortunate, bad in themselves, and lamentable as a precedent. I have no desire to arraign any body’s motives or intelligence. On the other hand, I take it for granted, that all engaged in it acted from the best of their judgments. Still, I must say, that when I look back now, after a long lapse of years, and read the judgment of those Judges who maintained the Constitution against the act of the Legislature, and on the other hand, that of those Judges who sustained the act of the Legislature against the Constitution, I must say, that I see, or think I see, all the difference between a manly, honest, and just maintenance of the right, and an ingenious, elaborate, and sometimes half shame-faced apology for what is wrong.

“Now I am willing to stake what belongs to me as a .

lawyer, and I have nothing else, and to place on record my opinion, that that decision cannot stand; that it does not now enjoy the general confidence of the profession; that there is not a head, with common sense in it, whether learned or unlearned, that does not think, not a breast that does not feel that, in this case, the right has quailed before the concurrence of unfortunate circumstances. . . .

“If there be error in the opinions of those who did not concur in the judgment, or if those opinions prove any want of legal perception, or thorough legal learning, insight, moderation, or discretion, or of consistent principle, without speaking of any near me, let me come in and take my humble share with Story and Thompson and McLean.”

My father thus speaks of the arguments and opinions in this case in letters to his friends :

TO CHARLES SUMNER, ESQ.

Washington, January 25th, 1837.

MY DEAR SIR :

I thank you truly and heartily for your kind letter. It was like a warm spring breeze, after a cold, wintry, northern blast which had frozen up all one's feelings and sensations. It was not the less comforting, that it was dated from Dane College, and told of all that was thought and done there, and of the law, and the learned in the law, sojourning there in literary ease, and not disquieted with the turmoils of Washington. It brought back old Cambridge to me, with somewhat of the feelings of Goldsmith, amid his desolate wanderings in strange realms,—

“Where'er I rove, whatever realms to see,  
My heart untravell'd fondly turns to thee !”

We are fairly into the business of the court; *in medias res*. The Charles River Bridge case has been under argument ever since last Wednesday, and is just concluded. Every argu-

ment was very good, above and beyond expectation, and that is truly no slight praise, considering all circumstances. Our friend Greenleaf's argument was excellent,—full of ability, point, learning, condensed thought, and strong illustration,—delivered with great presence of mind, modestly, calmly, and resolutely. It was every way worthy of him and the cause. It has given him a high character with the Bench and with the Bar, and placed him in public opinion exactly where you and I could wish him to be, among the most honored of the profession. He has given Dane College new *éclat*, sounding and resounding fame; I speak this unhesitatingly. But at the same time I do not say that he will win the cause. That is uncertain yet, and will not probably be decided under weeks to come. I say so the more resolutely because on some points he did not convince me; but I felt the force of his argument. Governor Davis made a sound argument, exhibiting a great deal of acuteness and power of thinking. Dutton's argument was strong, clear, pointed, and replete with learning. Webster's closing reply was in his best manner, but with a little too much of *fiercé* here and there. He had manifestly studied it with great care and sobriety of spirit. On the whole, it was a glorious exhibition for old Massachusetts; four of her leading men brought out in the same cause, and none of them inferior to those who are accustomed to the lead here. The audience was very large, especially as the cause advanced;—a large circle of ladies, of the highest fashion, and taste, and intelligence, numerous lawyers, and gentlemen of both houses of Congress, and towards the close, the foreign ministers, or at least some two or three of them. . . .

The Judges go on quite harmoniously. The new Chief Justice conducts himself with great urbanity and propriety. Judge Barbour is a very conscientious and pains-taking Judge, and I think will improve as he goes on. Our session will probably be short, and but for the constitutional questions before us, would have ended by this time. In truth, we broke down and sifted the whole docket last term, leav-

ing nothing ready for trial behind us. Our labors then, tell now. The docket scarcely now contains more than sixty-four or sixty-six cases, of which not more than seventeen or eighteen are new, so that the business of the court is diminishing.

Greenleaf departs to-morrow morning, but he leaves a high repute behind. I feel a sort of home-sickness in parting with him, though I have seen less of him here than I should at home.

I am anxious to know how codification will go in our legislature. I have never doubted that it will encounter strong opposition, and I question exceedingly whether Mr. Cushing's paper, if printed, with all its ability and learning, will not press against any scheme of codification. Personally, I have no interest in the fate of the project, because, as you well know, I shall decline being a commissioner, if I should happen to be asked. . . .

Give my kindest regards to Mr. Hillard, and believe me as ever,

Affectionately yours,

JOSEPH STORY.

TO PROFESSOR GREENLEAF.

Washington, February 11th, 1837.

MY DEAR SIR:

I have the pleasure of your letter from Dane College; and I rejoice at it because you are safe and sound at home, and in "good fame" abroad. I write you on Sunday, being deep in engagements, and can only thank you for all the goodly contents of your epistle. The Court will adjourn on Tuesday or Wednesday next. I shall then go on the speed of high pressure to Cambridge, the first and last in all my thoughts.

To-morrow (Monday) the opinion of the Court will be delivered in the Bridge case. You have triumphed. All the Judges, except McLean, are of opinion that the Su-

preme Court has jurisdiction. Judge McLean is for the defendants on this sole ground. The Chief Justice, and Judges Baldwin, Barbour, and Wayne, are for affirming the judgment of the State Court, dismissing the Bill. Thompson and Story are against the judgment, *totis viribus*, and McLean J. on the merits, *totis viribus*, on the same side. The Chief Justice will deliver the opinion of the Court. McLean will deliver his separate opinion on all the grounds. Story, J. will deliver the joint opinion of himself and Thompson, J. . . .

So good-bye, and may God help you and yours.

I am affectionately, your friend,

JOSEPH STORY.

TO MRS. JOSEPH STORY.

Washington, February 14th, 1837.

MY DEAR WIFE:

I had thought, when I last wrote you, that on this day the Court would adjourn, and I should have quitted Washington. Some business, however, has occurred, which will detain us two or three days longer, so that I do not expect to leave until the close of the week. The Charles River Bridge case is decided, and the opinion will be delivered to-day. Mr. Greenleaf has gained the cause, and I am sorry for it. Chief Justice Taney, and Judges Baldwin, Barbour, and Wayne, are against the Bridge; Judges Thompson, McLean, and Story, are for the Bridge. A case of grosser injustice, or more oppressive legislation, never existed. I feel humiliated, as I think every one here is, by the Act which has now been confirmed. . . .

I went last evening to see a planetarium, invented by a raw, uneducated Yankee, whose name is Russell, and who says he remembers me when he and I lived in Salem, and I first began the practice of the law. He was bred a wheelwright. The machine stands as it were on a basis like a

centre table, and is fifteen feet in diameter. It embraces all the planets, and several asteroids, and gives the motions of all of them exactly in their relative time and position to each other; they move in ellipses, and in the same oblique ecliptic which exists in nature, with all their moons and satellites revolving round them. We had the pleasure of seeing an eclipse of the moon, and of the sun, as distinct as if they were before us. It is altogether a most beautiful and perfect specimen of human ingenuity. If the inventor should bring it to Boston, as I think he will, you must go and see it.

The first breakfast bell is ringing, and I must bid you good-bye.

Your affectionate husband,

JOSEPH STORY.

The following letters from Mr. Webster and Chancellor Kent relate to this case of the Charles River Bridge:—

TO HON. JOSEPH STORY.

Sunday Morning.

MY DEAR SIR:

I lost the first five minutes of your opinion, but I heard enough to satisfy me that the opposite opinion had not a foot, nor an inch, of ground to stand on.

I say, in all candor, that it is the ablest, and best written opinion, I ever heard you deliver. It is close, searching, and scrutinizing; and at the same time full of strong and rather popular illustrations.

The intelligent part of the profession will all be with you. There is no doubt of that; but then the decision of the Court will have completely overturned, in my judgment, one great provision of the Constitution.

Yours ever, through good report, and evil report,

DANIEL WEBSTER.

TO HON. JOSEPH STORY.

New York, June 23d, 1837.

MY DEAR SIR :

. . . I have re-perused the Charles River Bridge case, and with increased disgust. It abandons, or overthrows, a great principle of constitutional morality, and I think goes to destroy the security and value of legislative franchises. It injures the moral sense of the community, and destroys the sanctity of contracts. If the legislature can quibble away, or whittle away its contracts with impunity, the people will be sure to follow. *Quidquid delirant reges plectuntur Achivi*. I abhor the doctrine that the legislature is not bound by every thing that is necessarily implied in a contract, in order to give it effect and value, and by nothing that is not expressed *in hæc verba*, that one rule of interpretation is to be applied to their engagements, and another rule to the contracts of individuals. . . . But I had the consolation, in reading the case, to know that you have vindicated the principles and authority of the old settled law, with your accustomed learning, vigor, and warmth, and force.

But the decision in *Briscoe v. the Bank of Kentucky* is quite as alarming and distressing. . . . It is in collision with the case of *Craig v. the State of Missouri*. If the bills of the Bank of Kentucky, constituted and owned as that Bank was, and with those bills a tender on execution in payment, under a penalty for refusing to take them, be not bills of credit, emitted by and under the authority of the State, and within the intendment of the Constitution, I don't know what could be. . . . I have lost my confidence and hopes in the constitutional guardianship and protection of the Supreme Court. I had now rather read the more humble labors of Circuit and State Courts. Brockenbrough's Circuit Court Reports I have read, and they are most delightful, for we are in the company all



the while of a great and good Chief Justice ; — and I long to get hold of another volume of Sumner, and there I am sure to find the law of the land expounded and enforced with the most extensive learning, the best taste, the loftiest morals, the most unshaken independence and freedom, and the most attractive graces of style and eloquence.

Yours affectionately,

JAMES KENT.

The fact, that in the only three constitutional questions which came before the Court during this session, my father found himself compelled to deliver dissentient opinions, indicates very plainly, that the constitutional views of himself and Marshall differed from those entertained by the majority of his present brethren on the Bench. Chief Justice Marshall and my father, and indeed all of the early Judges of the Supreme Court, had proceeded upon a liberal construction of the Constitution, as creating a government of efficient and paramount powers over the States. But the majority of the present Court inclined to a more rigid construction of the federal powers, in favor of State rights. My father now became convinced that a new era had come, and that with the spirit which now animated the Court, he could not hope to agree with them upon constitutional points. His position was therefore rendered somewhat embarrassing, and he was very desirous to resign his office, and devote himself to his professorial duties at Cambridge. The earnest remonstrances of nearly all his friends against such a course, induced him to abandon it at this time ; yet I cannot but think that it was dictated by prudence and wisdom. His judicial labors, added to all his other duties, were more than his constitution, strong as it was,

could be expected to support. He finally sank beneath their pressure, and an earlier abandonment of them might have prolonged his life; it certainly would have added to his happiness.

This intention of resigning his office, is thus alluded to in a letter to Mr. Justice McLean:—

TO MR. JUSTICE MCLEAN.

Cambridge, May 10th, 1837.

MY DEAR SIR:

I had yesterday the pleasure of receiving your late letter, and now send you a copy of the opinions of the Judges of the Supreme Court in the Charles River Bridge case, as printed at Boston.

Your opinion I have heard spoken of by gentlemen of the profession, in very high terms, and I think it has added strength to your judicial reputation. The opinion delivered by the Chief Justice has not been deemed satisfactory; and, indeed, I think I may say that a great majority of our ablest lawyers are against the decision of the Court; and those who think otherwise are not content with the views taken by the Chief Justice. The opinions were printed for the purpose of being laid before the Legislature. The Legislature passed a resolve on the subject, providing in some measure for some future mode of a contingent remuneration. But it was so inadequate, that the Bridge Proprietors declined to act under it, and the bridge draw is now kept up, and the bridge discontinued as a highway, by their order. What other steps are contemplated by them, I have not heard. . . .

There will not, I fear, ever in our day, be any case in which a law of a State or of Congress will be declared unconstitutional; for the old constitutional doctrines are fast fading away, and a change has come over the public mind, from which I augur little good. Indeed, on my return home, I came to the conclusion to resign. But my friends have inter-

posed against my intention, and I shall remain on the Bench, at least for the present.

Our country is in a state of unexampled distress and suffering. Credit, and confidence, and business are everywhere at a stand. The experiments of General Jackson, from his interference in removing the deposits and annihilating the Bank of the United States, down to the last infatuated act of the Treasury Circular, have produced their natural effects. They have swept over the country with the violence and the desolation of a hurricane. Will the people awake to their rights and duties? I fear not. They have become stupefied, and are led on to their ruin by the arts of demagogues and the corrupted influences of party. . . .

Believe me, with the highest respect,

Affectionately yours,

JOSEPH STORY.

The only circumstances which at all threatened to interrupt the agreeable personal relations of all the Judges, was a publication, by Mr. Justice Baldwin, in which some severe strictures were made upon the Commentaries on the Constitution. My father, however, took no notice of it.

TO RICHARD PETERS, ESQ.

Cambridge, June 14th, 1837.

MY DEAR SIR:

I should have thanked you before now for your kind letters, if my duties in the Circuit Court (not yet done) had not exhausted all my time. I have received all the sheets of your 11th volume, and also the pamphlet of Judge Baldwin. I have read the latter without surprise, and without any unsuitable emotion. I have no reply to make to it. I have no desire to make any; and I shall not trust myself to make but a single comment on it. Our late friend, Mr. Chief Justice

Marshall, approved all the doctrines in the Commentaries on the Constitution. Under such circumstances, I am quite consoled, although another Judge disapproves them.

I would gladly offer to prepare the titles of your Digest which you propose, if I were sure that I could find time ; but I hardly know where, or how, or when to find it. Besides all my other immediate duties, I am writing my work on Equity Pleadings and Practice, which will occupy every moment of my leisure till December. If you should not put your work to press until next winter, I think I could by that time digest the titles for you ; otherwise, I am afraid to promise.

In an half hour I am off for Newport, to hold the Circuit Court. I sate in Boston yesterday forenoon and afternoon, in the Circuit Court. And I am now to be whirled to the other end of the circuit, to take up the business to-morrow.

Mrs. Story remains as she has been. She desires her kindest regards to you. Pray say to Mrs. Peters and your daughters all the good things you can for me, and on my own account ; for there are precious few persons for whom I entertain so sincere a regard and friendship.

Believe me, truly and affectionately yours,

JOSEPH STORY.

The Court, during this session, (1838) consisted of the following Judges : Roger B. Taney, Chief Justice ; Joseph Story, John McLean, Henry Baldwin, James M. Wayne, Philip P. Barbour, John Catron and John McKinley — the latter two being the additional Judges appointed under the bill enlarging the Court.

The following letter, written during this year, is expressive of my father's feelings on the subject of International Copyright, prayed for in the petition of British authors ; and gives a glimpse into his home life : —

TO MISS HARRIET MARTINEAU.

Cambridge, April 7th, 1837.

MY DEAR MISS MARTINEAU :

I should long ago have thanked you for your letter of the 8th of November, accompanying the copy of the Petition to Congress, of British Authors, if I had received it at an earlier period. But it did not reach me until my return home from the winter session of the Supreme Court at Washington; not having your autograph on the outside, and my family supposing it to be some letter on ordinary business. Since my return home, I have been a good deal engaged in my professional duties, and in commencing the plan of a new law work; and having now said so much by way of explanation, and not of apology, for I am quite sure that you will always give me credit for welcoming your letters with the most grateful sense of your kindness, I proceed to converse with you (how much does that word "converse" imply!) on other topics.

You will have learned, long before this reaches you, of the fate of the Petition of British Authors. It was exceedingly well introduced, and sustained by Mr. Clay and Mr. Preston. But the body of our booksellers, or the trade, as they call themselves, is opposed to it. Nevertheless, I do believe, that if Congress had sat a month longer, the bill would have passed. All our American authors are in its favor, and the public are beginning to be enlightened on the subject, and to understand its bearing upon literature and genius, and a just liberality to authors, and last, but not least, upon their own immediate interest. To me it was a source of great gratification, to see a petition signed by so many glorious names. I take pride in advancing, as far as I can, the objects of it, nay, I enter into it with my whole heart, as a matter of sheer justice, and the only full return which America can make, for the solid instruction she derives from the science and

literature of the mother country, constantly pouring its treasures into our lap.

There is one point, however, which is important to be established in England, and which, at present, seems unsettled. Our booksellers have raised the doubt, and it seems fortified by the doubts of the English Judges, whether an American is now lawfully entitled to take a copyright in England. We know what the practice is; but the doubt is whether, by law, the copyright is valid. Parliament is now in session, and Mr. Sergeant Talfourd (that miracle of a literary lawyer) is, I perceive, the leader for an amendment of the law of England. Pray let him know that it is a matter of grave doubt, whether American authors can now possess a valid copyright in England. Let Parliament pass a declaratory act of reciprocity, declaring that all foreign authors, whose countries allow or shall allow to English authors, the right of copyright, shall be entitled reciprocally to the benefit of the English copyright acts. I am sure Sergeant Talfourd could procure such an act to be passed without difficulty; and such an act would ensure success to the same object in Congress at the next session. Let the British ministry also, if they will, suggest to the American Government the propriety of such an international copyright, and I am sure we shall soon find our administration, if not prompt, at least not reluctant, or opposed to it. I shall work for you in all ways I can. . . .

And this leads me to say a word or two about my own family. Mrs. Story has become a permanent invalid. I think her health is slowly on the decline, and I am sorry to say, that I entertain no hope of her ever being essentially better. . . . My daughter Mary has been somewhat out of health for the last six months, but she seems gradually regaining strength. William is in College, hale and cheerful, and flushed with hope, loving music, drawing, and study, as far as study suits the buoyancy of young men. We all miss you at our fireside in those two last hours of evening before

bed-time, which you used to light up with such delightful conversations and anecdotes, ay, and ghost stories too, as to make us forget our sleep, and to have waking dreams of pleasure. They all send their love to you, and share in my impatience for Miss Martineau's new work, "Society in America." I have looked over the advertisement of Messrs. Saunders & Otley many times, as it crossed my eyes in the English newspapers. By the by, I hope their house in New York will succeed. I have no doubt that it will, after the first oppugnation is over, if they persevere in sending us and selling us standard works at reasonable prices. . . .

Mr. Van Buren is President. Things look ill in all our money concerns, and public confidence is greatly shaken. But after a while, notwithstanding all our political blunders, we shall go ahead again; such is the recuperative power of a young country, however badly governed. The Supreme Court now consists of nine Judges, two having been lately added by an act of Congress. Mr. Taney is Chief Justice. I am the last of the old race of Judges. I stand their solitary representative, with a pained heart, and a subdued confidence. Do you remember the story of the last dinner of a club, who dined once a year? I am in the predicament of the last survivor. But wherever I am, believe me, very truly and affectionately, with my kindest regards to your mother and brother,

Your friend,

JOSEPH STORY.

Some views of my father, on the subject of Government, appear in the following letter, written to Dr. Lieber, after an examination of the manuscript of his Treatise on Political Ethics:—

TO DR. FRANCIS LIEBER.

Cambridge, August 15th, 1837.

MY DEAR SIR :

I have employed my earliest leisure in reading over the manuscript of the second book of your work on Political Ethics, entitled "The State." I have read it with great satisfaction. It contains by far the fullest and most correct development of the true theory of what constitutes a State, that I have ever seen. The distinctions between what is the State, and what is the Government; between the rights and powers of the State, and the equally important rights and powers of the individuals who compose the State; between sovereignty, as belonging to the State and Supreme Power, and the necessary limitations belonging to each, are discussed with great ability, force, and clearness. You have put the State upon its true foundation; a society for the establishment and administration of general justice, — justice to all; equal and fixed, recognizing individual rights, and not imparting them. I rejoice too, to find in the work, brought out with great strength of reasoning, the important truth, I would say in a Republican Government, the fundamental truth, that the minority have indisputable and inalienable rights; that the majority are not every thing and the minority nothing; that the people may not do what they please; but that their power is limited to what is just to all composing society.

The work abounds with profound views of Government, which are illustrated with various learning. To me many of the thoughts are new, and as striking as they are new. If I may be allowed to judge of the whole work from this specimen, I do not hesitate to say, that it constitutes one of the best theoretical treatises on the true nature and objects of Government, which has been produced in modern times; containing much for instruction, much for admonition, and much for deep meditation; addressing itself to the wise and



virtuous of all countries. The work has with me a still greater value, in that its aims and ends are practical. It deals with the principles of Government, and not with their forms. It puts aside the wild and visionary notion, the parent of so many revolutionary schemes, that the same form of Government is equally well suited to all countries and nations. It solves the question, what Government is best, by the answer (illustrated in a thousand ways) that it is that which best promotes the substantial interests of the whole people of the nation, upon which it acts.

I think the work will be very useful, as an elementary exposition of the true principles upon which civil society and civil government rest. Such a work is peculiarly important in these times, when so many false theories are afloat, and so many disturbing doctrines are promulgated.

I do not mean to say that all your views are in entire coincidence with my own upon all the topics; but they are such as every sober thinker ought to desire to examine, in order to review his own.

Believe me, my dear sir,

With the highest respect,

Truly yours,

JOSEPH STORY.

My father thus acknowledges the receipt of a copy of Miss Martineau's "Society in America," which was published during this year.

TO MISS HARRIET MARTINEAU.

Cambridge, November 3d, 1837.

MY DEAR MISS MARTINEAU :

I had the pleasure of receiving your work on "Society in America," which you so kindly presented to me some time ago. I had long before purchased the work and read it through, but I am nevertheless truly thankful for the present;

I shall be proud to place it in my library as a token of your remembrance of me.

Long before this reaches you, you will have seen the various reviews of the work in the American periodicals; in some of them it is spoken of in terms of high praise; and in others again, with a mixture of praise and blame. In truth, the opinions expressed in it were calculated to offend the pride of some, and the prejudices of many, and it ought not to surprise you therefore, that though it has received the highest welcome from some of your friends, it has met with a different reception in different parts of the country. The opinions which you have so freely expressed on the topic of slavery have of course subjected you to the denunciations of the South. The details which you have so powerfully and eloquently given of the evils of that condition, are truly frightful to the humane and the thoughtful; and this vein of your reflections has infused its strong coloring into all your other disquisitions.

I perceive everywhere throughout the work, the depth of your feelings and the impress of your mind. Many of your suggestions are very striking and awakening; and many of them well fitted to be pondered on with intense deliberation by Americans. The parts of the work which are most interesting to me, however, are your exquisitely beautiful sketches of natural scenery, your graphic delineation of American peculiarities, and the free and lively manner in which you touch the topics of social intercourse, and rural and frontier life. I think you have been misled in regard to the supposed existence of habits of intemperance among our ladies. In all my long life I have never happened to know half as many instances of such persons in respectable stations in life, as you heard of in a single city. And as a general fact, I do not doubt that the women of America are as free from this vice as any on the face of the globe.

In regard to your opinions on questions of politics and the Constitution of the United States, of course I am unable to

agree with you. My opinions as to the Constitution and the powers of the general government have been often judicially expressed; and I belong to the school of Mr. Chief Justice Marshall. I am sorry that you entirely differ from him; I cannot but think too, that you have not taken a true view of the actual workings of our government, and that you have overlooked the terrible influence of a corrupting patronage, and the system of exclusiveness in official appointments, which have already wrought such extensive mischiefs among us, and threaten to destroy all the safeguards of our civil liberties. However, I have not perhaps any right to trouble you with my own views on these topics; and you know me well enough to understand, that while I claim for myself the right of an independent opinion, I concede it with the utmost cheerfulness, and in the most extensive sense, to others. The reformers in America are a very different class from the reformers in England. If you had been in America the last six months and seen the whole country thrown into the utmost confusion, and suffering the most irretrievable losses from the violence of party spirit, and the rash and extravagant projects of the administration, you would have learned, I think, that there may be a despotism exercised in a republic, as irresistible and as ruinous as in any form of monarchy. . . .

Why did not Sergeant Talfourd follow up his copyright speech with an Act to secure foreign authors? I doubt now if the American Congress will act on the subject, until Parliament has shown that it is willing to adopt the rule of reciprocity.

My friend Mr. Sumner will hand you this letter, as I trust. He is in all respects worthy of your confidence and kindness.

Believe me very truly and affectionately,

Your obliged friend,

JOSEPH STORY.

The admirable spirit in which this criticism was re-

ceived by Miss Martineau will appear in the following pleasant extract from a letter written in answer :

TO HON. JOSEPH STORY.

Westminster, July 8th, 1839.

. . . Next, my dear friend, was the surprising candor of your letter. I owe you hearty thanks for the kind constructions you put on my intentions, and for the wonderful moderation of your censures, or, rather regrets, where the difference in our opinions cannot but rouse your disapprobation. All this made me very happy and very thankful to you. Then there was the warm tone of affection in your letter, which showed that your impressions from our intercourse remain as fresh and deep as my own. I have no fear now of losing your friendship. If all that I have written, and all the tittle-tattle and misrepresentation which I know to be going on about me among Americans on both sides of the water (naturally enough) have not lessened your regard, I may now be pretty sure of retaining it; for I think it can never be put to such hazard again. . . .

Yours, affectionately,

H. MARTINEAU.

On his return from Washington my father began his work on Equity Pleadings, to follow as a sequel to his Commentaries on Equity Jurisprudence, and to this he devoted all his leisure time after April. The following letter shows some of the labor of the year:—

TO DOCTOR FRANCIS LIEBER.

Cambridge, November 11th, 1837.

MY DEAR SIR:

Nobody takes more pleasure than I do, in receiving letters from you, and nobody, I am constrained to say, deserves

such a favor less. But it is not so much my fault as my misfortune, that I am compelled to give up to public and irresistible duty much of the time that I should be glad to devote to my friends. For the last six weeks I have been under the severest tasks, and discipline, and anxiety, that I could well be. The Circuit Court has been constantly in session, and I have been compelled to be there. There are nearly seventy law students, and every day that I could command any leisure I have been obliged to give them lectures. My work on "Equity Pleadings" is in press, and one third of it remains to be written before I go to Washington.

In truth I know not even now how to find a moment to write you, and I begin to fear that my own health will not stand such various efforts of duty.

I have not been able, until three or four days ago, to read your *Hermeneutics*. I am exceedingly pleased with it; it is full of excellent hints, and principles, and guiding rules, and what is very important, written in a clear, compact style, with great force of illustration, and accuracy of statement, and withal in a spirit (without which all other qualities are of little avail) of candor, and without partisanship. If I had been at your elbow, there are two or three little suggestions I might have made, and perhaps one or two qualifications, but none important to the general scope of the dissertation.

Very truly and respectfully,

Your obliged friend,

JOSEPH STORY.

The following letters, written from Washington during the session of 1838, explain themselves:—

TO MRS. JOSEPH STORY.

Washington, January 28th, 1838.

MY DEAR WIFE :

I happened a few days since to see, on Mr. Webster's table, the fifth volume of *Pickwick*, and I borrowed it and read it through. I have had many a hearty laugh over it, for the same humor pervades this as did the former volume. What particularly gratified me was the scene in the prison between Perker and *Pickwick*, by which the latter is induced to leave it; and the conversations and incidents between Sam and his father, on his visit of condolence. The latter are inimitable. I am greatly of opinion with Mr. Weller, as to "*Widders*;" they are very apt to have a moving sympathy for those who have lost their wives.

I am now engaged in reading Dr. Buckland's *Bridgewater Treatise on Geology*, and after I have finished that, I intend to read again Mrs. Somerville's *Connection of the Sciences*. There seems, at this moment, to be a lamentable want of amusing books, and I am therefore disposed to try my mind a little in natural philosophy, deeming that far better than to dream over the strange politics and stranger follies of the day.

I have been reading the late English newspapers, and much of and concerning the new Queen. I rejoice in the enthusiasm with which she is sustained by the people, and trust and pray that she may continue to deserve it. But she is on a giddy and a fearful height. Much must depend on her making a judicious choice in marriage, to save her from the perils of her station.

Good-bye, and may God bless you all.

I am your affectionate husband,

JOSEPH STORY.

TO MRS. JOSEPH STORY.

Washington, February 18th, 1838.

MY DEAR WIFE :

Divines seem to me so afraid of any doctrines which may be perverted to the aid of skepticism, that they seek to establish some innate principles of a mystical nature to counteract this tendency, and involve the subject, in my judgment, in far more wretched difficulties. Why men cannot rest satisfied with the common principles of evidence by which all human concerns are regulated, to govern them in relation to divine things, I confess myself unable to see. There seems to me, among divines, a perpetual desire to use human reason, and yet to supplant it upon particular topics. Christianity, it seems to me, is as conclusively established by an appeal to human reason for its evidence, and its truths, as it can be by appealing to the result of unknown powers, supposed to be innate in the mind, which may be disputed, and have ever been in dispute.

My health continues on the whole good, but I am sick at heart, and wearied with my labors. I wish with all my heart I were no longer a Judge, but able to live without the office. The Court will rise, I think, about the first week in March, and not before.

I am your affectionate husband,

JOSEPH STORY.

TO MRS. JOSEPH STORY.

Washington, February, 25th, 1838.

MY DEAR WIFE :

A melancholy occurrence took place yesterday morning, in a duel fought between Mr. Graves, of Kentucky, and Mr. Cilley, in which the latter was killed. It was a trifling affair

which brought it about, and simply upon a point of honor. Mr. Cilley has left a widow and four children. By some unlucky disclosure by the housemaid, to Mrs. Graves, she found out the fact while he was gone to fight, and I am told was in horrible agony during the three or four hours' suspense. Mr. Graves was not hurt. The parties fought with rifles, and not with pistols; and we are now come to that in this goodly city. We are told this morning that other parties are now gone out to fight another duel on the same ground; Mr. Webb, of New York, editor of the *Inquirer*, and Dr. Duncan, of Ohio. What will be the event we do not know; and there seems gathering about a more savage spirit of contention than in other times. . . .

I am compelled to leave off. Give my love to the children, and believe me as ever,

Your affectionate husband,

JOSEPH STORY.

In the following correspondence with Governor Everett, my father gives his views on the question whether the government of the United States is authorized, by the Constitution, to cede to a foreign nation, by treaty, any territory within the limits of the States.

TO HON. JOSEPH STORY.

Boston, 14th April, 1838.

MY DEAR SIR:

The legislature has adopted some resolves relative to the Northeastern Boundary of the United States, which have been presented to me for my official signature. One of them is in the following terms:

"*Resolved*, That no power delegated by the Constitution to the government of the United States authorizes them to cede to a foreign nation any territory lying within the limits of either of the States in the Union."



I beg leave to ask your opinion, (to be given confidentially or otherwise as you may deem proper,) whether you consider the principle asserted in this resolve, as a well-settled doctrine of Constitutional Law. I have carefully read what is said of the treaty-making power in your Commentaries, Volume iii. p. 354, et seq. At the close of § 1502, you name certain restrictions on the treaty-making power, which must be assumed; but that of ceding a part of a State is not one of them. You add, however, the remark, "Whether there are any other restrictions necessarily growing out of the structure of the government will remain to be considered whenever the exigency shall arise."

The restriction in question (if it exist) must be one of this character, and I should prefer to follow your wise counsel, and let it remain to be considered, when the exigency arises. The present controversy does not appear to me to create such an exigency, for it is a question not of ceding an admitted portion of the territory of Maine, but of ascertaining the boundary between the British territory and ours. The resolve of the legislature, however, raises the abstract question, and I wish your advice, whether I can safely affirm it.

I am, dear Sir, with the highest respect,

And sincere attachment,

Faithfully yours,

EDWARD EVERETT.

I would observe, that it is my present inclination, if I do not sign the Resolves, to let them pass *sub silentio*, as they are only expressions of the opinions of the legislature.

TO HIS EXCELLENCY EDWARD EVERETT.

Cambridge, April 17th, 1838.

MY DEAR SIR:

In reply to your favor of the 14th inst. which I received by yesterday's mail, I beg to say, that I consider the Resolve

referred to as very objectionable as a matter of Constitutional Law. I cannot admit it to be universally true, that the Constitution of the United States does not authorize the government of the United States "to cede to a foreign nation any territory within the limits of the States of the Union." If the proposition be true, then in case of a war, it would be incompetent for the government by a treaty to cede any territory conquered during the war, and which might be indispensable to purchase peace. So a cession could not be made, even with the assent of the State within which the territory was situated; for neither the State nor the United States could alone cede it, and then both could not. Yet the cession might be of a nature calculated for the safety of both nations, and might be an equivalent for a like cession on the other side.

I remember to have had some conversation with Mr. Chief Justice Marshall, some years ago, when the subject was under discussion, with reference to the contested boundary in Maine. He was unequivocally of opinion, that the treaty-making power did extend to cases of cession of territory, though he would not undertake to say that it could extend to all cases; yet he did not doubt it must be construed to extend to some.

It appears to me that our legislature have very unnecessarily, and (as I think also) against our true public policy with reference to the contested boundary of Maine, stated this proposition. It may embarrass the government in its negotiations; and it is wholly gratuitous,—since, in a case of contested boundary, there is no pretence to say that an ascertainment of the true boundary involves the question of cession.

I always look with alarm and regret upon all attempts of our legislatures to settle constitutional questions in the heat of controversy, and under the impulses of party. Nor do I think that Massachusetts ought to commit herself upon any doctrine of this sort, at this time. I doubt its soundness;

but I do not at all doubt its inexpediency. The time may arrive when our very existence and salvation as a nation, may depend upon the exercise of this very power. If the national government does not possess it, it is to all intents and purposes an extinguished right of sovereignty, for the States do not possess or retain it.

I see no objection to your leaving the resolve to its constitutional operation, *sub silentio*, if you think it best not to return it to the legislature with objections. I think the doubt of a Constitutional point furnishes of itself a sufficient ground for rejecting a resolve embodying a positive declaration of it, unless there be an absolute necessity for some declaration on the subject.

What I have written I must ask you to consider as confidential, though I do not mean by this to say that I should object to its being seen by any of our confidential friends, such as Mr. Webster, if you should wish to consult him.

Believe me, with the highest respect,

Truly yours,

JOSEPH STORY.

The illness of Dr. Bowditch, the distinguished mathematician, which terminated shortly after in his death, elicited the following letter:—

TO REV. JOHN BRAZER.

Washington, March 5, 1838.

MY DEAR SIR:

I had the pleasure this morning of receiving your letter, which, like every other thing from your hands, was truly welcome to me. I am sincerely grieved to hear of the state of Dr. Bowditch's health, though a few days since my letters from home led me to fear that he was in imminent danger. He is one of the best of men in his public, his private, and his domestic relations; and having long enjoyed his friendship, I cannot but be overwhelmed by the expected approach.

of such a calamity as his death. He has, indeed, lived long enough for his fame; and long enough to leave an enduring memory of his extraordinary virtues. What you say as to his frame of mind, his acquiescence in the will of Providence, and his resignation as a man and a Christian to his fate, fills me with alternate emotions of admiration and deep sympathy. Such a just course of thought and feeling is in harmony with his life and character. It reflects back a beautiful light upon his conduct and principles. While I contemplate it, my soul rises within me, and I am almost tempted to exclaim, "May my latter end be like his!" What a chasm will his death produce in all our associations. I know no individual who can supply his place. And even now, before the event, I shudder at the desolation which impends over us. . . .

The late duel was in all respects most horrible and excusable; but it is beginning, like all other temporary excitements, to give way to other novelties. The Judges of the Supreme Court were all invited to attend the funeral of Mr. Cilley; but they all, with the exception of Mr. Justice Baldwin, declined; and passed a written resolution, which is placed on their records, assigning as a reason, that the duel was a violation of the law, and they were compelled, by a sense of duty, to decline attending the funeral. Whether they will be sustained by public opinion in taking this stand, is more than I can pretend to conjecture. But we shall in any event be satisfied with having done our duty, and our appropriate duty.

The Court will rise at the close of the present week, after a long and tedious session. To me an attendance here is but a melancholy renewal of the memory of departed days, and pleasures never to return. I am called away.

Believe me most truly and affectionately yours,

JOSEPH STORY.

The engagements of the year are spoken of in the fol-

lowing letter to Mr. Wilkinson, introducing his friend Charles Sumner, Esq.

TO JAMES JOHN WILKINSON, ESQ.

Cambridge, November 8d, 1837.

MY DEAR SIR :

I ought long since to have thanked you for your letter of the 16th of March last, which I received some months ago. But my apology, like your own, is not the want of inclination, but a positive want of leisure. I am compelled to do what my duty requires as a Judge, and a Professor, rather than to gratify my own inclinations towards my most esteemed friends and correspondents. I am now engaged in a work on Equity Pleadings, which will form an appropriate sequel to my former work on Equity Jurisprudence. The subject I have found full of difficulties, and obscurities, and even the preparation of a single head, that of Parties, occasioned me to undertake very extensive researches. I had not then seen Mr. Calvert's book on the same subject, though if I had, I do not know whether it would have materially abridged my own labors.

My particular friend, Charles Sumner, Esq., will do me the favor to hand you this letter, and I beg to introduce him to your acquaintance as a gentleman every way entitled to your respect and confidence. Mr. Sumner is a practising lawyer at the Boston Bar, of very high reputation for his years, and already giving the promise of the most eminent distinction in his profession. His literary and juridical attainments are truly extraordinary. He is one of the editors, indeed, the principal editor, of the "American Jurist," a quarterly journal of extensive circulation and celebrity among us, and without a rival in America. He is also the Reporter of the Court in which I preside, and has already published two volumes of Reports. His private character also is of the best kind for purity and propriety. He visits Europe not merely

for curiosity, but to accomplish himself more thoroughly in the great objects of his profession; not merely to practise, but to extend the boundaries of the science of law. I am very anxious that he should possess the means of visiting the Courts of Westminster Hall under favorable auspices; and I shall esteem it a personal favor, if you can give him any facilities in this particular.

I have been examining, with a good deal of attention, the working of your new rules of Pleading, which have demolished the general issue. At present, I am not entirely satisfied that in the full extent the change has been so beneficial as was anticipated. I perceive the Reports are beginning to be crowded, not to say overloaded with special pleadings, which present a great variety of intricate questions of no great general importance.

Believe me, with the highest respect,

Most truly your obliged servant,

JOSEPH STORY.

In the beginning of this year (1838) the Treatise on Equity Pleadings was published. Of this work, Prof. Greenleaf says, that the subject which it treats, "however abstruse and forbidding in its formularies, he has most successfully laid open, exhibiting its true principles and grounds, vindicating its character, and bringing it within the easy comprehension of the student. There are no works in our language in which the true doctrines and practice of the Law of Equity, and its importance to the administration of complete justice, are so convincingly taught; and probably no one of his works has been received by the profession with greater thankfulness, or is more frequently consulted."

This work was dedicated to Hon. Jeremiah Mason with the following letter:—

TO THE HON. JEREMIAH MASON, LL. D.

Cambridge, January 1st, 1838.

SIR:

I esteem it a great privilege to have the opportunity of dedicating this work to you. Few circumstances in my life could be more grateful than those which enable me to inscribe on the pages which contain my own imperfect juridical labors, the memorials of my private friendships, as well as the avowals of my reverence for the great, the good, and the wise. Your own enviable distinction, so long held in the first rank of the profession, and supported by an ability and depth and variety of learning, which have had few equals, and to which no one can bear a more prompt and willing testimony than myself,—would alone entitle you to a far higher tribute than any I can bestow. I well know, that I speak but the common voice of the profession on this subject; for they have well understood the vigor and the weight of that lucid argumentation, which has spoken in language for the cause, and not merely for its ornament; *neque id ipsum, tam leporis causâ, quam ponderis*. But I confess myself more anxious to be allowed to consider this dedication, as a tribute to your exalted private worth, spotless integrity, and inflexible public principles, as well as a free expression of my own gratitude for your uniform friendship; a friendship, which commenced with my first entrance among the bar, in which you were then the acknowledged leader (a period, when the value of such unexpected kindness could not but be deeply felt, and fully appreciated,) and which has continued, undiminished, up to the present hour. Such reminiscences are to me more precious than any earthly honors. They fade not with the breath of popular applause; and they cheer those hours, which, as age approaches, are naturally devoted to reflections upon the past, for instruction, as well as for consolation.

I am, with the highest respect, your obliged friend,

JOSEPH STORY.

Among the notices of this work the following extract from an article in the *English Jurist*, for October, 1838, is selected to show the manner in which it was received abroad, beyond the reach of any personal considerations of friendship:—

“ We hail the appearance of this work with great pleasure. The name of its distinguished author vouches for the ability of its execution; and on no subject could he have more usefully employed himself than that which he has selected. There is one unusual and interesting circumstance connected with this treatise; it contains an attempt (the first of which we are aware) to show that the abilities of a transatlantic lawyer may be made available in England; not merely in the elucidation of general principles, but in the explanation of practical details. Here is a treatise upon pleading, written in America, and intended as a work of reference, not merely for the American, but for the English pleader. This is a bold experiment; still, such are the merits of the work, that we venture to say it will prove a successful one.

“ It is not our intention to present our readers with a detailed account of this treatise. It contains a thorough investigation of the system of Equity Pleading, its principles and practice. The author has never lost sight of the former, while examining the *minutiæ* of the latter, a task on which he has bestowed a degree of labor which it is really impossible to consider without astonishment. Numbers of books are cited in this treatise, the circulation of which, we had thought, was confined to London, but which he has evidently perused, compared, and criticized with the greatest diligence and the most striking acuteness.

“ We cordially recommend the work to readers of every denomination. It is so written as to be intelligible and instructive to the mere beginner, while at the same time it contains a store of learning, from which even the greatest



masters of their profession need not be ashamed to draw. We should have inserted a much longer notice of it, were we not sure that its intrinsic merits would obtain for it a higher place in the estimation of the reader, than can possibly be conferred by the eulogium of a critic."

Notwithstanding the accustomed labors of my father, in so many directions, his devotion to the Law School continued as ardent as ever, and he now gave two hours daily to his conversational exercises with the students, the number of which increased during this term to eighty-seven. Charles Sumner, Esq., while absent in England, received the following letters from him, which, among other matters of interest, give an account of his occupations in the Law School, on his Circuits, and in the Supreme Court.

TO CHARLES SUMNER, ESQ.

Cambridge, March 15th, 1838.

MY DEAR SIR :

. . . But to return to topics more agreeable to you to hear about. Our last term at Washington was on the whole, dull, and dry, and tedious. There were few causes of general interest argued, and still fewer which gave rise to very comprehensive researches into nice or recondite law. Nevertheless, the decisions were in the main such as will approve themselves to the profession. The case of *Rhode Island v. Massachusetts*, was argued upon a preliminary point as to the jurisdiction of the Court to take cognizance of the cause. The objections were that it was a political question which was involved, (a question of boundary and sovereignty) and next, that without some Act of Congress, the Court had no power to issue process against a State. The Court overruled both objections, and asserted their jurisdiction; and the cause lies over on the merits. Mr. Justice Baldwin delivered

the opinion of the Court. It was full of his elaborate citations and comments in his own peculiar way. I did not sit in the cause.

Then we had a case of *Stockton and Stokes v. The Postmaster-General*, for a *mandamus* to compel him to obey an Act of Congress, directing him to give them a credit of some \$40,000. He resisted, and insisted that he was part of the Executive, and not liable to Congress or the Courts for his official proceedings, but solely to the President, whom alone he ought to obey, and who had the sole right to direct his action. We overruled him, (six Judges to three) and directed an award of a peremptory *mandamus*. The Chief Justice Taney, and Judges Barbour and Catron, dissented on an individual point, the jurisdiction of the Circuit Court of District of Columbia to issue the original writ. All the other cases were of common private rights, and are scarcely worth mentioning.

You may ask how the Judges got along together? We made very slow progress, and did less in the same time than I ever knew. The addition to our numbers has most sensibly affected our facility as well as rapidity of doing business. "Many men of many minds" require a great deal of discussion to compel them to come to definite results; and we found ourselves often involved in long and very tedious debates. I verily believe, if there were twelve Judges, we should do no business at all, or at least very little. So far as my personal comfort and personal intercourse were concerned, every thing went on well. But the whole was a melancholy business to me. The spectres of the past were continually flitting before me; and I seemed to be awakening from a long dream in "Sleepy Hollow." But for the companionship of Judge McLean, who lodged in a contiguous room, I should scarcely have known what to do. His friendship and society were a great solace to me. . . .

Mr. Greenleaf is very well, and has worked hard during the winter, with a school of upwards of fifty law students.

The school is in full blast. My work on Equity Pleadings is finished, and will be on sale to-day. It is about seven hundred and fifty or sixty pages in all. I had to make the index of cases and matters, without any assistance. . . .

May God bless you. Believe me,

Most truly and affectionately,

Your friend,

JOSEPH STORY.

TO CHARLES SUMNER, ESQ.

Cambridge, August 11th, 1838.

MY DEAR SUMNER:

I have received all your letters, and have devoured them with unspeakable delight. All the family have heard them read aloud, and all join in their expressions of pleasure. You are now exactly where I should wish you to be, among the educated, the literary, the noble, and though last not least, the learned of England; of good old England, our mother land, — God bless her! Your sketches of the Bar and Bench are deeply interesting to me, and so full that I think I can see them in my mind's eye. I must return my thanks to Mr. Justice Vaughan for his kindness to you; it has gratified me beyond measure, not merely as a proof of his liberal friendship, but of his acuteness and tact in the discovery of character. It is a just homage to your own merits. Your Old Bailey speech was capital, and hit by stating sound truths in the right way.

Oh, for the coronation! the coronation! and you in your Court dress! We all shouted hurra! and Mrs. Story was so gratified by your letter, that she almost determined to write you to thank you for it. I do it now as her proxy. . . .

Apropos, nearly all the copies of my first volume on Equity Jurisprudence are sold, and another edition will probably be put to press this autumn. The second volume is rapidly going off, and Equity Pleadings is going so fast that I believe two thirds of the edition (1500 copies) are gone. I have had

a most laborious, shockingly laborious circuit; and it is hardly over yet. No longer ago than last Saturday, I delivered an opinion two hours long in a case of a bottomry bond, presenting some new points, — the argument of which occupied four days, by Stackpole and Dexter for the plaintiffs, and Choate and Mason for the claimants. I decided for the plaintiff. The opinion was full of research into the civil law, and the ancient maritime writers and civilians, and the line of argument required it. Indeed, there will be an ample volume of opinions for you before your return. I have recently received a pamphlet on the Trial of Controverted Elections in the House of Commons, from the author, whose name is Percival Welden Banks, Barrister at Law, but whom I have not the pleasure of knowing. It is a very clever, or as we should say, sensible performance. I shall send him a letter of thanks. I have also received a copy of Williams on Executors and Administrators, second edition, from the author, Edward Vaughan Williams, of Lincoln's Inn. Is he the son of Sergeant Williams? The present is truly valuable, for the work is excellent. . . .

And now that I have told you all about myself, of which you kindly asked information, I must turn about and tell you something of our home concerns. The last session of Congress ended disgracefully for the Administration, which has persisted with a most perverse and rash obstinacy in its financial projects, ruinous to the country. The Sub-Treasury scheme, one of the worst measures, in my judgment, which could have been fastened on the country, and which would have been the source of the most mischievous corruptions of the country, was defeated after a terrible struggle. The Administration did all it could to carry it, and it was lost by a majority of about twenty only in the House, though in my conscience I do not believe that there were thirty members who really approved it. . . .

I think, however, the better men are acquiring a higher tone of thinking. We talk the matter into our law students

daily. They begin already to be wide awake to the dignity of the law and its morals. Greenleaf is excellently well. The Law School flourishes. We had sixty good fellows last term, with the prospect of at least seventy next term. I have given nearly the whole of last term, when not on judicial duty, two lectures every day, and even broke in upon the sanctity of the *dies non juridicus*, Saturday. It was carried by acclamation in the school; so that you see we are alive. . . .

I envy you all your literary talk and literary friends, but still more your judicial friends of the Bar and Bench. What you state of their rank in the profession, is exactly what I had supposed, either from reading the Reports, or from rumors abroad. Denman is right. Brougham will rise with posterity. Some of his judgments are admirable specimens of juridical reasoning. But he seems now to be in a false position; absolutely wrong, and mischievously demolishing his high reputation. For heaven's sake, cannot some one put him right? I always took Parke to be the leader; and Patteson next; and Tindal a strong, old-fashioned common lawyer. Alderson is apt and clear, and of good learning; Cottenham deserves his increasing reputation, and Langdale does not deserve his decreasing reputation. He will overcome the extravagant expectations of his friends, and be a great Judge. I have not thought very highly of the Vice-Chancellor; he does not seem to me to rise above mediocrity. What do they say in England? You know what I have always thought of Lyndhurst; what you have said confirms my opinion. Your character of Vaughan charms me; pray say every thing to him and to his brother, Sir Charles, of my deep respect for and attachment to them.

You perceive that I ramble from one thing to another. But I have not time to do more than follow the current of my thoughts as they rise. I had the pleasure of seeing at Washington, last winter, Mr. Mackintosh, son of Sir James, and the author of the Biography of his father. He has, since his return, kindly sent me a copy. It is a delightful work. Pray

get acquainted with him if you can. He is shy, but intelligent and agreeable.

Pray put your conservative friends right as to us in America. We are not all demagogues, or mad, conceited democrats. They seem hostile to all of us, and to our institutions, from gross mistakes of our opinions and our principles. Why, our Whigs are quite as conservative as themselves, making only the proper distinctions as to the form of government.

I wish Hayward would turn his attention a little more to America; he is by far too exclusive and local. The circulation of his magazine would be far greater here if he would show some kindred feeling for American Law. Who writes the commercial articles for his magazine? They are very good. His biographies are exceedingly pleasant and instructive.

But I must be done, having, as the subpoena says, laid aside all other things for you. Before this reaches you, you will have seen Edinburgh. What a rush of thoughts that name gives rise to! Not merely Scott, and Campbell, and Jeffrey; but Hume, and Robertson, and Stewart, and Burns, and a host of the proudest names in literature and science are before me. . . .

Believe me, most affectionately yours,

JOSEPH STORY.

The "case of the Bottomry Bond," spoken of in the last letter, was "The Ship Fortitude, (3 Sumner's R. 228,) in which the rights, duties, and liabilities of the borrower and lender in bottomry were very ably and learnedly discussed.

It will be seen, by the previous letter, that nearly all the copies of the first edition of the Commentaries on Equity had been exhausted. It became necessary, therefore, to prepare another edition. To this task he

at once betook himself, and enlarged the work by his additions at least one third. At the same time he was performing very heavy Circuit duties, lecturing daily for two hours in the Law School, holding extra moot-courts, and writing a new Treatise on the Law of Agency. This work he put to press in December, and it was published in the following spring.

The Commentaries on Agency met with the same success as his previous works. It was highly commended in all the journals at home and abroad, and at once found a large and ready market. The American Jurist, for January, 1840, speaks of it as having "supplied every deficiency, and left nothing to be desired by the practitioner or student. . . . The whole work is marked with that ample and redundant learning, and vigorous good sense which have given his previous writings so high an authority, both in England and America." The London Law Magazine, for February, 1840, in a review of the work, says: "The powerful assistance which Mr. Justice Story has already given in the study of several departments of Law and Jurisprudence, is a sufficient reason for drawing the attention of our readers to this new publication; but an additional motive, were any needed, would be supplied by the spirit in which all his publications are conceived. . . . He has entered philosophically into the subject, has traced principles with persevering scrutiny, and without losing sight of the wants of a practical lawyer, has produced a treatise in which the student may ascertain the elements and principles on which the entire doctrine is founded."

I select the following agreeable letters, among many

others, as an evidence of the reception which this work met with from learned and accomplished minds familiar with the subject of which it treats. The first letter is from George Joseph Bell, Esq., the author of the able Commentaries on the Law of Scotland.

TO HON. JOSEPH STORY.

Edinburgh, 12th December, 1838.

MY DEAR SIR:

I address you as if I had the honor of being known to you. I have conversed much with you, and have heard of you so much from our mutual friends who have visited our shores, that I cannot speak to you as to a stranger.

I have to acknowledge many obligations to you for knowledge imparted and views opened of great consequence, and you will easily believe me in expressing my respect for your labors, when I tell you that, in learning from your friend, Mr. Sumner, your intention of writing on the Law of Agency, I at once abandoned a half-completed work on that important subject.

I have ventured to send to you two books, which, from a sense of duty to my pupils, I have lately published,—one on the Principles of the Laws of Scotland, another of illustrations of those principles from adjudged cases. You will, of course, receive them as they were intended, not for the perusal of the masters in jurisprudence, but for the initiation of students.

While your books and judicial arguments are filling us (those of us who do read) with admiration, it cannot fail to give us some little pain to see that you are, in great views and comprehensive learning, getting far before us. But I trust this will only excite us to that generous strife and emulation out of which may come universal improvement.

I have the honor to be, my dear Sir,

With very sincere respect, yours faithfully,

GEORGE JOS. BELL.



The next letter is from Mr. Justice Patteson, of the Queen's Bench.

TO HON. JOSEPH STORY.

33 Bedford Square, November 5th, 1839.

I beg to return you many thanks for a copy of your Commentaries on the Laws of Agency. I readily avail myself of this opportunity to acknowledge the great obligations under which you have laid all the members of the profession of the Law, and especially those who have to administer it, by the learned and profound treatises which you have published, and to express how grateful I feel to have any communication with so distinguished a Judge.

The respect paid to American Reports and Law Treatises in England is, I think, rapidly increasing, and tends much to the improvement of our theory and practice, and, I trust, will continue.

Your obliged servant,

J. PATTESON.

The next letter is from John William Smith, Esq., the accomplished compiler of "Smith's Leading Cases."

TO HON. JOSEPH STORY.

12 King's Bench Walks, Temple, October 29th, 1839.

SIR :

I beg leave to return you my best thanks for a copy I received yesterday of your valuable work on Principal and Agent. I would endeavor to tell you how highly I estimate it, but that I should incur the blame of presumption, were I to venture any opinion, even the most laudatory, on the work of so distinguished a lawyer. I am happy to say that I have

already heard it much admired by others, whose judgment carries here much weight with it. . . .

I have the honor to be,

Your obedient servant,

JOHN WILLIAM SMITH.

The next letter is from William Burge, Esq., the learned author of the Treatise on Suretyship, and of the Commentaries on Colonial and Foreign Laws.

TO HON. JOSEPH STORY.

Lincolnshire, 31st March, 1840.

MY DEAR SIR:

. . . I have to return you many thanks for your work on Agency. Your publisher here had sent me a copy, but on receiving that which came to me direct from yourself, I returned to him that which he had previously sent me. I have read it with great attention and profit. You have rendered the examination of this branch of Commercial Law singularly valuable by your illustrations from the Civil and Foreign Law. I am rejoiced to hear that you intend to follow the same plan in treating of the other leading branches of Commercial Law. You have my sincerest wishes, that for your own sake, as well as for that of the public, an abundant share of health may be allotted to you. Let me ask you whether the law of Principal and Surety will form a separate treatise? My reason for asking that question is, that I may leave my manuscript in my drawer. We are not sufficiently familiar here with the peculiarities of the Civil Law, as well as of Foreign Codes, in this branch of law. I shall be very glad indeed to hear that it forms part of your plan. . . .

I beg you to believe me, my dear Sir,

With the greatest esteem and respect,

Your very faithful and obliged friend,

WILLIAM BURGE.

The opinion of Sir W. W. Follett, Esq., the distinguished advocate and Attorney-General, one of the brightest ornaments of Westminster Hall, is thus expressed:—

TO CHARLES SUMNER, ESQ.

Duke Street, Westminster, November 11th, 1838.

MY DEAR SIR:

Accept my best thanks for the valuable book you have been so kind as to send me. Mr. Justice Story is, of course, well known to us here as the author of the best book that has been written on the Conflict of Laws, and it gives me great satisfaction to possess another work from the pen of so profound a lawyer and accurate a reasoner as he is.

Permit me also to assure you that this copy will always possess an additional value to me from its coming through your hands.

Believe me, my dear Sir,

Most truly yours,

W. W. FOLLETT.

## CHAPTER VII.

### PROFESSORIAL AND JUDICIAL LIFE.

EXCESSIVE LABOR — LETTERS FROM WASHINGTON — ADVANTAGE OF LITERARY STUDIES TO A LAWYER — PLAN OF TREATISES ON COMMERCIAL AND MARITIME LAW — CASE OF NICHOLS *v.* COUCH — CORRESPONDENCE WITH R. H. DANA, JR. — LETTER FROM MR. DANA CONTAINING REMINISCENCES — LOSS OF THE STEAMER LEXINGTON — LETTER ON AMERICAN ORATORS AND STATESMEN — NOMINATION OF GENERAL HARRISON — LIEBER'S POLITICAL ETHICS — VIEWS IN RESPECT TO A BANKRUPT ACT — CORRESPONDENCE WITH MR. JUSTICE COLERIDGE — LETTERS TO MR. EVERETT, MR. WIGRAM, MR. FIELD, DR. LIEBER — PUBLICATION OF NEW EDITIONS OF BAILMENTS, CONFLICT OF LAWS AND EQUITY PLEADINGS — LETTERS FROM MR. JUSTICE COLERIDGE AND MR. BURGE.

THE Law School was now rapidly increasing in reputation under the auspices of the two professors, and numbering between eighty and ninety students. In this department my father's time was passed without any very striking events, devoted only to steady labor, in which his energies were tasked to their utmost. He was, in fact, at this period, overburdened with work, and it was evident to his friends, that he was undertaking more than his health could support. But labor was to him an excitement which he could not forego. Pressing on towards his goal, he could not stop to calculate the expenditure of health and strength. All this year he was running against time. The following letters, written at this period, recount, among other things, the various occupa-

tions of the year 1839, and the series of legal treatises which he proposed to write:—

TO MISS HARRIET MARTINEAU.

Washington, January 19th, 1839.

MY DEAR MISS MARTINEAU:

You will be surprised that I write you from this city, and more so that I have not thanked you before for your letter, which I received some months ago. But, in truth, it has not been a matter of choice, but almost of necessity. Within the last year the business of my Circuit has been doubled, and it was only on the Saturday before I left home for the Supreme Court, that I adjourned my last Court at Boston. We have also between eighty and ninety students at the Law School, upon whom, at every interval of leisure from the duties of my Circuit, I have been obliged to bestow a constant attention by lectures, &c. . . .

You have also, I perceive, been engaged in various labors, some of which I have not as yet had the good fortune to see. But I have read, and with exceeding pleasure, your review of Miss Sedgwick in the *Westminster*. It is a beautiful tribute from one who can appreciate excellence and discriminate its various developments. By the by, the *Westminster* is rising in reputation among us, and in some of the late numbers there are articles of a high order, which have been received here with great favor. I am glad to see that you are enrolled among its permanent contributors, but I shall look with even more interest to your other literary efforts, and especially to the series in which you are now engaged.

I presume you may wish to know what Congress are doing. It is the short session, and very little business of a public nature has as yet been brought before either House. The refusal to act upon the abolition petitions, being in effect a denial of the Constitutional right of petition, has created a good deal of excitement; and the question of slavery is be-

coming more and more an absorbing one, and will, if it continues to extend its influence, lead to a dissolution of the Union. At least, there are many of our soundest statesmen who look to this as a highly probable event.

The only other subject of general interest now before Congress is the sub-treasury scheme, (as it is called) substituting a machinery of the Government itself for the usual agency of banks, as depositaries and remittants of the public money, which is strongly opposed by the whole Whig party, as a measure designed to concentrate in the executive department the whole power over the currency of the country, and thus by its patronage and its arbitrary measures, to subject the commerce of the country to an irresistible influence. It will probably be defeated.

I am glad to say that the trade of America is universally reviving, and that the terrific blows which struck down its prosperity, directed by the arm of the Administration, have ceased, and left us, as we may, to resume our ordinary business. No country but a young and vigorous one could have borne such sad mismanagement and various experiments. It affords one of many proofs how easy it is under specious pretexts to blind the people to their own true interests, and to make them the victims of mere partisan and selfish projects.

I am looking with great interest to the movements on your side of the Atlantic. What is to be the reign of Victoria? Are the Whigs to retain power, or are the Tories to succeed them in the Administration? I cannot but think that the Radicals are too eager for changes, and too precipitate in their movements. I fear that I shall differ from you on this point. It seems to me that time is a great thing in affairs of state just now. Every hour of a Whig Administration will consolidate the means of future advancement in reform, so far as it is desirable. If the Tories should return to power, the retardation of all reforms will be greatly increased, if not indefinitely postponed. It seems to be the destiny of all Whig Administrations to last but for a brief season. I look

with no small anxiety to the meeting of Parliament and the positions of Lord Durham, and Lord Brougham, and the Ministry.

I presume that you see most of our periodicals; they will sufficiently inform you of the progress of our literature. I know of no recent work likely to excite much interest in England. . . .

Believe me most truly and affectionately your friend,  
JOSEPH STORY.

TO JAMES JOHN WILKINSON, ESQ., OF THE TEMPLE, LONDON.

Washington, January 22d, 1839.

MY DEAR SIR:

I am now at the seat of Government of the United States in attendance at the annual session of the Supreme Court. Although I had a long time ago the pleasure of receiving your letter, stating that you had sent me an unique copy of "*Boethius de consolatione Philosophiæ*," yet it was but a short time before I left home that I had the gratification of receiving it. This is to me a great literary curiosity, and very much enhanced in value by coming from your hands, and as an expression of your kindness. I have proudly placed it in my library, among my most valued curiosities of this sort. In America, we have few antiquities of any kind, and although I have a strong natural tendency to such studies, I have had few opportunities of indulging my taste. America is hardly old enough yet to make the love of the old supersede the love of the new. Yet I hope we are fast advancing towards that period of national history.

The note of Mr. Parker which you enclosed was very gratifying to me, and I am much obliged to him for his favorable opinion of my work on Bailments. That work is now nearly out of print, and I shall soon begin to make preparations for a new edition. At present, I am engaged in preparing commentaries on "*Commercial and Maritime Law*," which will probably occupy, in the whole, five or six vo-

lumes; but each treatise will constitute a distinct and independent work. The first volume will treat of the Law of Agency, with illustrations from the civil and foreign law. This volume is now in the press; and I trust will be completed in a couple of months after I return home, so that I hope to have the pleasure of sending you a copy by the beginning of the next summer. My work on Equity Jurisprudence is now passing through the press in a new and enlarged edition containing all the later discussions. . . . I have availed myself of the opportunity to correct some of the errors, and to make the work better entitled to the public favor. But, indeed, my judicial duties, and my professorial employments, scarcely allow me the necessary leisure to make such emendations as I could desire. I am almost compelled to examine and write on the spur of the occasion.

I perceive that your late Reports contain a great many cases on the subject of the new Rules of Pleading; and that Parliament has continued, for a limited period, the power of the Courts to make additional rules. What, on the whole, has been the practical operation of the new rules? Have they lessened litigation? or promoted certainty in ascertaining the points positively in issue? or facilitated the general despatch of business and the progress of suits through their various stages before trial?

In America, as I have formerly stated to you, we have almost abolished special pleading; and we are looking to you to ascertain the success of your experiment; and if it be successful, it is not improbable that some of our American States will adopt your course. I shall be glad to know what is the opinion on this subject among the profession. It is to be expected that at the first operations there will be many miscarriages, and many demurrers to the special pleadings. But it is desirable to know whether the difficulties are practically increasing or diminishing. . . .

We have just received news of the death of Mr. Justice Allan Park, of the Common Bench. His work on Insurance



was published only a few years before I came to the Bar; and I well remember the high favor with which it was then received, and the strong relish with which I read it forty years ago. As one after another the Judges of your Courts depart, who were, as it were, the familiars of my youthful studies, I feel deeply the passage of time, and seem to be musing among the ruins of the past.

Believe me, with the highest respect and regard,

Truly yours,

JOSEPH STORY.

TO MR. WILLIAM W. STORY.

Washington, January 27th, 1839.

DEAR WILLIAM:

I am much obliged to you for your letter, and what you may not exactly have conjectured, I agree entirely in the views suggested in it. My opinion is, that every man should propose to himself one great object in life, to which he should devote his main, but not his exclusive attention. Without keeping constantly in view one main object or purpose, a man never can hope for eminence, and not even for success. He will become inert, capricious and desultory, preparing many themes, and accomplishing none. On the other hand, an exclusive devotion to a single pursuit or object, generally makes a man narrow in his views, vulgar in his prejudices, and illiberal in his opinions. I think every man should widen his learning and literature, and vary his tastes as far as he may, by comprehensive examinations, not inconsistent with, or superseding his main pursuit.

A lawyer, above all men, should seek to have various knowledge, for there is no department of human learning or human art, which will not aid his powers of illustration and reasoning, and be useful in the discharge of his professional duties. It has been the reproach of our profession in former ages, and is, perhaps, true to a great extent in our own times, that lawyers know little or nothing but the law, and *that*, not in its philo-

sophy, but merely and exclusively in its details. There have been striking exceptions, such as Lord Hardwicke, Lord Mansfield, Lord Stowell, Lord Brougham, and Mr. Justice Blackstone. But these are rare examples; and too few to do more than to establish the general reproach. I might, in our country, add an exception in Chancellor Kent, who is a scholar and general reader.

I agree, also, that the true secret of study is not merely constancy, but also variety or change in it. A man who always reads in one line, soon grows dull, and ceases to think; and change of study invigorates as well as amuses the mind. Besides, he who has a taste for different pursuits, is not only more independent of others in his enjoyments, but he is more master of his own time and thoughts; he wastes less in the mere pursuit of idle and desultory pleasures. So that you may perceive, that I am not yet so old, as not to believe that there are other things besides law, which are worth trying one's mind in grappling with, and improving one's tastes and perceptions, by mastering. But not to prose too much in this way, I will turn to other topics.

Yesterday, all the Judges and principal members of the Bar dined with the President. It was a splendid dinner.

We are going steadily on in business, but not making any rapid advances. We had a fine argument from Mr. Crittenden and Mr. Webster a few days ago, and the presence of a bevy of ladies to add greater interest to the scene. Give my love to the family.

I am, affectionately, your father,  
JOSEPH STORY.

The case of Nichols and Couch, in which the master and mate of a vessel were indicted for cruelty and ill usage, practised on one of the seamen under them, came before my father this year. Upon trial, the prisoners were found guilty, and sentenced, the one to ninety

days imprisonment and one hundred dollars fine; and the other, to thirty days imprisonment and ten dollars fine. This sentence occasioned some strictures in the newspapers at the time. The case was considered to be an aggravated one, and the punishment too light. Among others, Richard H. Dana, Jr., Esq., the author of the striking work, entitled "Two Years before the Mast," which has won so wide and deserved a reputation, entertained this opinion, and moved by his interest to secure to seamen their due rights, he wrote an article for the *American Jurist*, severely commenting on the sentence. Some hesitation having been expressed by the editors to accept it, the following correspondence ensued between Mr. Dana and my father, which is highly honorable to both:—

TO HON. JUDGE STORY.

Cambridge, September 30th, 1839.

DEAR SIR:

Since my return from sea I have taken great interest in every thing that concerns seamen, particularly in what relates to their legal rights and duties, and the administration of the laws passed for their protection. Having had peculiar opportunities for learning their hardships and the nature of the grievances of which they complain, and having thought a good deal upon the causes and remedies for them, I have wished, for some time, to make a few suggestions to those of the profession who are interested in the matter. Accordingly, at the recommendation of several friends, I have prepared an article for the forthcoming number of the *Jurist*. I have taken as the basis of it the recent case of *Nichols and Couch*, because that affords the best illustration of my subject, and because in your sentence many of the points upon which I wish to speak are brought out or implied. Yet,

although I make use of this case chiefly, I mean that my remarks shall apply to all cases of a similar nature.

Upon offering the article to the Editors of the Jurist, they expressed themselves satisfied with it, and wished to give it a place, but at the same time felt a little hesitancy about doing so, on your account. Mr. Hillard, in particular, said that his respect and affection for you were so great, and his sense of the obligations which he was under to you so strong, that he would make any sacrifice rather than do what might in any way be disagreeable to your feelings. He agreed with me in my views, and did not think there was any thing which should cause unpleasant feelings in yourself; yet he felt an uncertainty, arising from his peculiar relation to you. I told him that I understood his feelings perfectly, and knew myself to be as incapable of doing any thing of the kind as he could be; and that I had determined from the first, in case the article were published, to let you know that I was the author, together with my reasons for writing it, and that I would now relieve him by taking all the responsibility upon myself. With this assurance he was satisfied; and it is my chief object in now addressing you to say, that if there is any thing relating to yourself in the article which you may in any way object to, I wish the blame of it to rest entirely on myself, and none of it upon the editors of the Jurist.

While at sea, it was my lot to witness many instances of cruelty and oppression, and to hear of many more. One in particular, which I saw, was of so shocking a character that, being unable to interfere at the time, I made a vow, that if God should put it in my power in the course of my future life to do any thing in behalf of seamen, I would do it. I feel that from my experience, and from having thought upon the subject, it is my duty to avail myself of this opportunity to suggest some things, either not known to most of the public and our profession, or very little attended to by them; and I should think meanly of myself if I suffered an over-

anxiety about persons to prevent my speaking. You, too, sir, would be the last to wish it.

It is unnecessary to mention to you, sir, (for I trust you have always felt it,) the respect and deep personal attachment entertained for you by every member of our school. It is greater than I have ever known from young men toward one standing in such a relation to them. In these feelings I will not allow that I am surpassed by any one of them. It is a pleasure to me to have such sentiments and to speak of them at all times. I have also been brought up with a conservative reverence for office and age. Having these feelings and principles strong in me, I was at times almost led to think that, considering every thing, — my youth, my situation in the school, &c., — it might be better for me not to come out upon such a subject. Yet the motives which I have mentioned, and the consideration, that if I did not take it up there was no probability that any one else would, have governed me.

Trusting that in what I have done I can in no way cause you an unpleasant feeling, but that it may at some time be of use to one or another of my fellow beings, I hope you will always believe me to be,

Yours, with the deepest respect and affection,

R. H. DANA, JR.

TO RICHARD H. DANA, JR.

Cambridge, October 1st, 1839.

MY DEAR SIR:

Your article for the *Jurist* requires no apology to me, because, in the first place, free and full comments on the proceedings in Courts of Justice are essential to its due administration; and because I know full well that your own just feelings and right principles on all subjects must have my sympathy. The truth is, though perhaps unknown to you, that the administration of justice in the Circuit Court in favor of seamen (for they are generally the parties indicted)

has been so mild and the punishments so moderate, that the complaints from merchants and officers of ships have been loud and long, that the ship's discipline has been greatly relaxed, if not destroyed thereby. To such complaints I have listened, but I have never been convinced that they were well founded.

It may not be known to you that the very Act, by which officers are now liable to be punished for abusing seamen, was drawn by me, and procured to be passed by my very urgent solicitations.

In respect to the case of Nichols and Couch, which was so misrepresented and misunderstood in the newspapers, I can tell you, that so strangely and grossly were some of the facts perverted in the evidence, and so incredible and contradictory was some of the testimony from the seamen, that my greatest fear was that the jury would not find any verdict of guilty. I thought both guilty on the evidence, and so endeavored in my charge to present the matter to the jury. But neither Judge Davis nor myself placed the slightest confidence in the exaggerated statements of cruelty given by some of the witnesses. I am persuaded that, when all the jury recommended the mate to mercy, and a number the master also, they meant clearly to show that they took the same view of the matter which we did. I have since learned, from very unexceptionable sources, on further inquiry, that the real facts were not misunderstood by the Court. If you had been as long in a court of justice as myself, you would be astonished and humbled at the vast extent of exaggeration and even of perjury which characterizes civil and criminal causes, where seamen and officers are concerned, respecting the crimes and the misdemeanors and bad conduct of each. I lament the painful necessity of saying so.

Believe me, dear sir, with the truest regard,

Affectionately, your friend,

JOSEPH STORY.

The following highly interesting letter from Mr. Dana, in answer to a request on my part for a copy of the preceding letter, as well as for any personal reminiscences of my father, paints an admirable picture of him on the Bench, in the Law School, and in private life. I am happy to be able to adorn my pages with so delightful a tribute from one of his most esteemed pupils.

TO WILLIAM W. STORY, ESQ.

Boston, May 3d, 1851.

MY DEAR SIR: •

I have delayed answering your letter, partly on account of an unusual pressure of engagements, and partly because it was necessary to have the few letters in my possession from your father copied, as they were bound into a book.

The correspondence of October, 1839, revives the memory of an occurrence that had entirely passed out of my thoughts. Certainly, no better evidence can be given of the confidence felt by your father's pupils in his magnanimity and kindness, than the transaction that gave rise to my letter. I was just about being admitted to the bar, and expected to practise mainly in the Courts of the United States. In addition to the usual discouragements of a young lawyer's beginning, which are neither few nor small, to have brought upon myself the ill will of the presiding Judge of the Courts in which I was principally to act, would have been little short of suicide. But I knew so well your father's generosity and fairness of mind that I felt little doubt that, being satisfied of my motives, he would not allow our relations to be disturbed. His reply to my letter was what I expected from him. To say that he never afterwards allowed the occurrence to make any difference in his treatment of me, would be doing him but little justice. I honestly believe the truth to be, that he entirely forgot it.

I practised early in his Court, arguing causes there from the first year of my admission, and received from him the kindest attentions. His manner from the Bench toward young men was of a kind I have never seen elsewhere, from Judges of whatever temperament or disposition. He treated us as though he had our success at heart. He took care to interweave some compliment, if it was in the least degree deserved, and if our argument was on a false scent, from some ignorance of later decisions, or some error of application, he would hear it patiently, or try to give us the right direction, or the necessary information, in such a way as not only to save our feelings, but to save our credit with our clients and the spectators.

I recollect once being called in to argue a motion with but little time for preparation. I made the usual mistake of young lawyers, — giving my time to an investigation of the first principles, instead of looking for the latest authorities. Accordingly, I made what I thought was a very convincing argument, on first principles, and was about to stop. Your father saw that I was ignorant of a late decision at Washington, (which, however, had been a year or two in print,) and that my clients and some members of the bar were present; so, instead of cutting me off, as would have been done at the other end of the building, with a — “Well, Sir, but that is not the law; that has all been overruled years ago” — he took me up after this wise, — “Your principles, Mr. Dana, are undoubtedly sound, and the inferences you make from them are logically drawn. I should be governed by them entirely were it not for a recent decision, which I see is not generally known to the profession, where it was held, that although the general principles you have laid down are perfectly correct, yet where, as in this case, there is, &c. — then, &c.” In short, he made it seem as though it would have been rather remarkable if I had known the new case, and that it was a trifle compared with the soundness of my general principles. But, was there ever a young man who



practised before your father, that had not reason to be grateful to him and to love him? The secret of this lay not only in his kindness of heart, but in the fact that his own learning and distinction were so great that he had no need, and his devotion to the law as a science so entire that he had no wish, if the end of justice was attained, to place you at a disadvantage as compared with himself. But how many Judges do this! No man ever knew Judge Story to do it.

Soon after I was admitted, I had occasion to argue a motion for an injunction before him in Chambers, *ex parte*. The case involved some points of general interest in Equity practice and principles; as it related to the deceptive use of trade-marks; but the granting of the injunction was matter of little doubt. Your father appointed the Library of the Law School as the place for hearing the motion, gave notice to the students, and had them nearly all present. This was partly as an exercise for the school, but in a great degree, as I know from the direction he gave the hearing, — requiring me to develop the principles and facts, — and from his previous introduction of the case to the school, to afford me an opportunity of appearing to advantage before so good an audience, some of whom had been my fellow students.

Of the character of Judge Story as a teacher, it is needless for me to speak. His pupils in all parts of America, whatever may be their occupation or residence, or whatever the lapse of time, will rise up, as one man, and call him blessed. He combined, in a remarkable manner, as has been said by everybody, the two great faculties of creating enthusiasm in study, and establishing relations of confidence and affection with his pupils. We felt that he was our father in the law, our elder brother, the patriarch of a common family. We felt as if we were a privileged class, privileged to pursue the study of a great science, to practise in time in the cause and courts of justice before men, where success must follow labor and merit, — where we had only to deserve, and we could put forth the hand and pluck the fruit. The pettifogging,

the chicanery of the law, were scandals, or delusions, or accidents of other times. The meanest spirit was elevated for the time, and the most sluggish and indifferent caught something of the fervor of the atmosphere which surrounded him. If he did not, it was a case in which inoculation would not take.

You remember the importance that we attached to the argument of moot-court cases. Yet, no ambitious young man, on his first appearance, showed more interest in the causes than your father, who, as you know, had usually heard them argued before at Washington, or on his circuits, by the most eminent counsel. Saturday, you remember, is a *dies non juridicus* at Cambridge. To compel a recitation on Saturday afternoon, among the undergraduates, would have caused a rebellion. If a moot-court had been forced upon the Law School, no one would have attended. At the close of a term, there was one more case than there was an afternoon to hear it in, unless we took Saturday. The counsel were anxious to argue it, but unwilling to resort to that extreme measure. Your father said, — “Gentlemen, the only time we can hear this case is Saturday afternoon. This is *dies non*, and no one is obliged or expected to attend. I am to hold court in Boston until two o’clock. I will ride directly out, take a hasty dinner, and be here by half-past three o’clock, and hear the case, if you are willing.” He looked round the school for a reply. We felt ashamed, in our own business, where we were alone interested, to be outdone in zeal and labor by this aged and distinguished man, to whom the case was but child’s play, a tale twice told, and who was himself pressed down by almost incredible labors. The proposal was unanimously accepted. Your father was on the spot, at the hour, the school was never more full, and he sat until late in the evening, hardly a man leaving the room.

Do you remember the scene that was always enacted on his return from his winter session at Washington? The school was the first place he visited after his own fireside.

His return, always looked for and known, filled the Library. His reception was that of a returned father. He shook all by the hand, even the most obscure and indifferent; and an hour or two was spent in the most exciting, instructive, and entertaining descriptions and anecdotes of the events of the term. Inquiries were put by students from different States, as to leading counsel or interesting causes from their section of the country, and he told us, as one would have described to a company of squires and pages, a tournament of monarchs and nobles on fields of cloth of gold;—how Webster spoke in this case, Legaré, or Clay, or Crittenden, General Jones, Choate, or Spencer, in that, with anecdotes of the cases and points, and all “the currents of the heady fight.”

I could talk with you for hours on the recollections of this fascinating school, (for such it truly was to me) but there is little worth putting upon paper, of the even tenor of study, recitation, argument, and friendly, unrestricted conversation, in which we held our way. As great as are the merits of his successors, which all acknowledge, I do not believe that such a peculiar combination of qualities to constitute a teacher of the science of law to young men, will be likely to be found again for many generations.

I have in my library a copy of the first edition of the first law book your father published,—the *Precedents of Declarations*,—presented to my grandfather, with a very diffident note from the publisher, bespeaking his favorable consideration of this first work of a young member of the Essex Bar, published anonymously. It is a singular instance of the mutability of fame. The diffident author is now known by jurists throughout Christendom, while the Judge to whom the publisher looked with so much anxiety is hardly remembered out of New England. Your father's second book, if I recollect aright, is dedicated to my grandfather, by himself.

We bear a grateful recollection of your father's attachment to Mr. Allston, and of the interest he took in preserving the memorials of his fame as an artist and a poet. I remember

him, at the grave, at that striking scene of the moonlight funeral ; and afterwards, he was foremost in every thing that was proposed tending to secure the passing impressions of Mr. Allston's genius and fame among us.

I am very glad to know that you are preparing his Biography. We shall all look forward to it with great interest.

Believe me yours truly,

R. H. DANA, Jr.

In going to Washington this winter, my father was on board the ill-fated steamer Lexington, which on its return voyage through the Sound was burned, and all its passengers and crew, with two or three exceptions, perished under the most heart-rending circumstances. Among the persons on board who were lost will be remembered the distinguished German, Dr. Follen, and the actor, Henry J. Finn. The first of the following letters, written at this time, alludes to this melancholy accident:—

TO MRS. JOSEPH STORY.

Washington, January 19th, 1840.

MY DEAR WIFE:

This is my usual hour of writing to you, and I do so, not that any thing worth stating has occurred, but simply to say that I continue well. The weather has, for the past week, been excessively cold; and our accommodations this winter are very poor and mean; and although I do not usually complain, I can truly say that I never was so uncomfortable since I first came to this city. We live with a widow lady, who appears to me to belong to that numerous family, the Do-littles, and she is utterly inefficient in the management of the whole concern. We never eat any of our meals until an hour after the reasonable time.

But a more melancholy subject engrosses all my thoughts. The loss, the dreadful loss of the steamboat *Lexington*. It was in that very boat, on her last trip from Stonington to New York, that I came on Friday night. If I had known that she was to run, before I left home, I would never have taken passage in her. On going on board I found her crowded with merchandise of all sorts; narrow, uncomfortable, and every way disagreeable. Almost every hour during the night we were stopped by some mal-adjustment of the machinery, and sometimes for a half hour at a time. I suspected all was not right, and I remained awake nearly all night, dreading some explosion or fire. Others of the passengers were in the same predicament. But as things were, we were equally in peril to proceed or to go back. When I left the boat in the morning, I came to a solemn determination never, under any circumstances, to go on board of her again; and I then had the strongest suspicions, that some accident would soon take place. If it had not been, that we had an uncommon calm in the Sound, I am far from being satisfied that my fears would not have been realized. The boat was crank and unmanageable, and the whole conduct was reckless, rash, and unjustifiable. General Miller, of Salem, who was in the boat with me, expressed the same fears as myself. I thank a good Providence for my escape from this calamity. The boat was utterly unfit for such a service, and I think the proprietors guilty of the most gross misconduct. Indeed, it is marvellous that this boat, the only one which has plied on the Sound, and which has always been deemed unsafe by prudent persons, should have been selected by the proprietors as the regular line-boat for the winter. I hope some public meeting will be called to denounce such misconduct.

Poor Dr. Follen! what a dreadful fate was his! I am told that some of the passengers, who came with me down the Sound, were upon their return among the sufferers. . . .

This dreadful calamity has spread a general gloom over the city, but it will soon pass away, and the usual round of

heartless frivolity will resume its reign. The hour of dinner is now arrived, after lingering delays.

I am, with love to the children,

Ever your affectionate husband,

JOSEPH STORY.

The next letter was in answer to an application by A. Hayward, Esq., to furnish materials for an article on American orators and statesmen. The article appeared in the sixty-seventh volume of the English Quarterly Review, and is written in a very candid and appreciating tone:—

TO A. HAYWARD, ESQ.

Cambridge, January 4th, 1840.

MY DEAR SIR :

It was but a very few days ago that I had the pleasure of receiving your letter, although it bears date so long ago as the first of November last. I beg to return you my sincere thanks for it, and assure you that it will at all times afford me sincere pleasure to answer any inquiries, or do any acts needful to you on this side of the Atlantic. Allow me to add, that I have long been familiar with your writings, not only in the Quarterly Review, but in the Law Magazine, and that I have received a great deal of pleasure and instruction from them. It may not be without some interest for you to know that the Law Magazine is taken by the University in this place, and the whole series from the beginning is to be found in our Law Library, and is constantly read by our Law students. I have long thought that the biographical articles, as well as the articles upon Common and Civil Law, are so valuable, and so generally read, that they would well repay the publishers, if printed in distinct volumes.

The work containing "The Eloquence of the United

States," in five volumes, to which you refer, contains a fair specimen, although certainly a very incomplete collection, of the published speeches of our statesmen and orators. I believe that we had no orators before the Revolution; and indeed, for the most part, few specimens can be found, of any importance, down to the beginning of the nineteenth century. It was not the fashion to take notes of public speeches, and far less for the speaker himself to publish them in an authentic form, until about the later period. Indeed, many admirable speeches rest now merely in tradition, or the memory of the hearers, without ever having been reported by the press.

If I were called upon to say who were the ablest orators in America, and were generally so esteemed, within my own memory, (and I can confidently speak for the period of the last forty years,) I should say they were, Fisher Ames, Samuel Dexter, Harrison Gray Otis, John Q. Adams, Josiah Quincy, Edward Everett, and Daniel Webster, of Massachusetts; Alexander Hamilton and Rufus King, of New York; John Wells and Thomas A. Emmet, (an Irishman by birth,) also of New York; John Sergeant, Joseph Hopkinson, and Horace Binney, of Pennsylvania; Luther Martin, and William Pinkney, of Maryland; Patrick Henry, James Madison, (President,) John Marshall, (Chief Justice of the United States,) John Randolph, (an eccentric genius,) and William Wirt, of Virginia; William Gaston, of North Carolina; Robert G. Harper, and Robert Y. Hayne, of South Carolina; Henry Clay, of Kentucky; James A. Bayard, of Delaware. All these, excepting Edward Everett, were lawyers; and I may remark that this profession has almost exclusively furnished the ablest men who have ever been distinguished in the Congress of the United States. Of many of these gentlemen few speeches have been preserved at length; of some of them, and indeed, of Harrison G. Otis, who is still living, I do not remember a single speech published *in extenso*. Yet, certainly, he is esteemed in America as a highly accomplished orator and statesman. The ablest speech of Mr. Wirt,—that

in the Supreme Court of the United States on the question of the rights of the Cherokee Indians,—is not found in the collection above referred to. If I can find a fugitive copy, I will send it to you. I may say also of the speeches of Dexter, Emmet, Hamilton, and Pinkney, that no reports in print exhibit correctly the vast compass and variety of their powers. They were too busy to write them, or too secure of present fame to seek to make themselves well known to posterity. The same remark is true of the speeches of Mr. Chief Justice Marshall, although one delivered by him in Congress, in 1800, on the delivering up of Jonathan Robbins, *alias* Nash, to the British government, under the treaty of 1794, enjoys a high degree of celebrity among us.

I am just on the eve of my departure for Washington, to attend the annual session of the Supreme Court there, and therefore have little time to look about for materials to assist your designed article. But if I shall be able to collect any valuable materials at Washington, I will send them to you by the earliest opportunity, as a present of which I shall ask your acceptance. In the mean time, I beg you to accept a copy of my Miscellaneous Writings, which will be transmitted to you through a friend, and which may perhaps be of service to you, since they contain some slight sketches of Dexter, Pinkney, and Emmet. There is a work published, in some six or seven volumes, with portraits, called the American National Portrait Gallery, containing biographical sketches of our ablest men, which may assist you in your labors. The sketches (as is usual in such cases) are flattering, and highly colored; still the main facts are fairly and correctly narrated. You will easily have access to the work, I presume, at any of the American booksellers in London, as for example at Wiley & Putnam's, Paternoster Row, or Kennett's & Co.

I am much obliged to you for your kind offer to send me the Law Magazine as it appears. But gratifying as it would be to receive it at your hands, I do not think that I ought so



to tax your kindness, as I now receive and read the numbers regularly. Whatever you may hereafter wish to send me, will come safely, either through Kennett & Co., or through Mr. A. Maxwell, bookseller, Bell Yard, Lincoln's Inn. Is there any thing in America which you would like to possess? I will with great pleasure send you any books which you may indicate at any time.

Believe me, dear Sir, with the highest respect,

Truly your obliged friend and servant,

JOSEPH STORY.

The nomination of General Harrison for the Presidency of the United States, is commented on in the following letters :—

TO SIMON GREENLEAF, ESQ.

Washington, February 6th, 1840.

MY DEAR SIR:

The nomination of Harrison runs like wildfire on the prairies. It astonishes all persons, friends and foes. The general impression here is that he will certainly be chosen President. Mr. Webster told me last evening that there was not the slightest doubt of it. The Administration party are evidently in great alarm, and some are preparing to leap overboard before the ship sinks. In the mean time, the farmers in the West are beginning to feel the public pressure most severely. All their produce is at a very low price, money is exceedingly scarce, and business at a dead stand. I confess, that, desponding as I habitually am on all such subjects, I feel more encouragement than I have felt for a long time.

We are going on steadily in the Supreme Court with our business. None of it is of very great public interest, but there have been a few questions of a commercial nature of considerable importance. I shall bring home a number for the moot-court, and I trust save one for a jury trial. The Chief

Justice has been indisposed for a day or two, but is now better, and will soon resume his seat in Court.

I am glad to hear that you are going on with your work on Evidence, which I shall look to with deep interest as a noble contribution to the common stock of the school. I hail as an auspicious omen your intended resumption of your Cambridge domicile.

Faithfully, your friend,  
JOSEPH STORY.

TO MRS. JOSEPH STORY.

Washington, February 9th, 1840.

MY DEAR WIFE :

. . . . It is wonderful how the nomination of General Harrison has taken. In the Western States it has been received with acclamations. He is a very honest man, whose public services have been great, and whose military achievements have given him considerable honor. But his talents are not of a high order, and at this hour he is filling the office of clerk of a County Court in Ohio. What, however, seems to give him great strength is, that he is poor and honest, or, as Mr. Abbott Lawrence said the other day to me, "the people believe that he won't lie, and won't steal." The real truth is, that the people are best pleased with a man whose talents do not elevate him so much above the mass, as to become an object of jealousy, or envy. The prospect of his being President is quite encouraging. Webster thinks it certain. I am not so sanguine. What I most anxiously desire is, to see a President who shall act as President of the country, and not as a mere puppet of party. . . .

Give my love to the children, and believe me truly,  
Your affectionate husband,  
JOSEPH STORY.

The next letter relates to my father's health, and

comments on Dr. Lieber's Political Ethics, and Mons. De Tocqueville's work on America. It is a little singular, that though such extensive use is made of my father's Commentaries on the Constitution in the latter work, no acknowledgment is made, and the Commentaries are scarcely referred to by name.

TO DR. FRANCIS LIEBER.

Cambridge, May 9th, 1840.

MY DEAR SIR:

I have just received your kind letter;—kind I call it, although it reproaches me with my long silence. I should have written you before if I could; but up to the hour of my departure, I was not metaphorically, but literally overwhelmed with business—far more than I ought to have done if I could, and more than I could do. Indeed, I have been compelled to overwork myself so much last year, that I am now a great sufferer by it. I intended to have written you from Washington; and should so have done, had I not been taken severely ill, and been under medical treatment ever since, and ordered to abstain from all labor which I can possibly avoid. My complaint is bilious and a torpor of the liver, which requires constant attention and constant abstinence. The long and short of the matter is, that I have worked too much and too hard, and now I shall be obliged to lie by for a half year at least, to recruit myself. What think you now of my apology for silence?

I have read the second volume of your Political Ethics with great pleasure. It is excellent, abounding in elevated morals, sound common sense, statesmanlike views, and enlarged philosophy. I recommend it constantly to all my friends, and especially to young men, as leading them in the right track. It is too anti-transcendental to please some visionaries, but it will commend itself more and more to all sound thinkers and to all honest inquirers. . . .

I do not wonder that you are struck with the barrenness of foreign treatises on Constitutional Law ; and especially as applied to forms of government like ours. Europeans know little on the subject. It is surprising how little they read of what has been written here. The work of De Tocqueville has had great reputation abroad, partly founded on their ignorance that he has borrowed the greater part of his reflections from American works, and little from his own observations. The main body of his materials will be found in the *Federalist*, and in Story's Commentaries on the Constitution ; *sic vos non vobis*. You know ten times as much as he does of the actual workings of our system and of its true theory.

Believe me, most truly and affectionately yours,

JOSEPH STORY.

An effort was made, at this time, to procure the passage of a Bankrupt Act, and in answer to a request from Mr. Webster, that my father would give his opinion, as to whether it should include corporations, he writes as follows :—

TO HON. DANIEL WEBSTER.

Cambridge, May 10th, 1840.

MY DEAR SIR :

I am just returned from my Eastern Circuit, a good deal exhausted by it, and have time only to say a few words. I do not know, that there are any absolutely insuperable objections to bringing corporations within the reach of a Bankrupt Law ; but there are some practical difficulties. The same machinery which would be complete as to individuals, would require many complex provisions in cases of corporations. What would you do as to Railroads, Turnpike, and Bridge Corporations ? Should Banks be also entirely subject to the same summary proceedings, as com-

mon trading and manufacturing corporations, considering the sudden changes in circulation and markets, which may compel them sometimes to suspend for a short time? What would be the effect of requiring all debtors to a Bank, suddenly to pay all their notes and liabilities? How would you manage with Insurance Companies, when there are many policies of insurance outstanding on long voyages? Here again, you must reach the assets of corporations, not only by examining the officers thereof on oath, but also the stockholders on oath; otherwise, in many cases, the remedy would be ineffectual. Consider what difficulties would arise in cases of numerous stockholders residing in different States; some infants, some married women, some trustees. I see much practical embarrassment in bringing them compulsorily within a Bankrupt Act. But if they are brought within such an act, I think the stockholders should have the benefit of a discharge, upon surrendering all their stock and the corporation assets, exactly as individuals. Their sacrifices, otherwise, would be enormous, and the future creation of corporations would be greatly discouraged.

But one main difficulty with me, is, that if corporations, now existing, should be brought within a Bankrupt Law, without such a discharge, it would at once shake all confidence in corporation stock, and depreciate it excessively. The corporation capital in New England would at once lose a large part of its present value, and be scarcely marketable. This would be a sad consummation of all our public calamities, and depress us still more.

I confess, too, I have some doubts, as to the constitutionality of a Bankrupt Law, which should put corporations upon a different footing from individuals, giving the latter a discharge, and not the former; and providing different rules of bankruptcy in the one case from the other. The act would not be a "uniform act on the subject of bankruptcy," in the sense of the Constitution.

No Bankrupt Law in England, or, indeed, in any other

country, as far as I know, ever has reached corporations. Is not this a strong, practical objection? Is it quite certain, that State Rights, as to the creation and dissolution of corporations, are not thus virtually infringed? I confess, that I feel no small doubt, whether Congress can regulate State Corporations by any other laws than the State laws. A State Corporation is entitled to just such rights and powers, as the charter gives it, and I do not well see where Congress can get the power to alter or control them, or to suspend or extinguish them.

These are first, hasty thoughts. Pray consider them. I have not time to think more, but merely sketch these sentences as they arise in my mind, without any attempt at arrangement.

Send me a printed copy of your Bankrupt bill. Do not suffer any bill to be limited to less than five years. This is the shortest time to see its fair operation. It will otherwise be run down before its just effects are seen, exactly as the old Bankrupt Act.

Yours, most truly and affectionately,

JOSEPH STORY.

The following letter was written on the occasion of Mr. Everett's appointment as Minister Plenipotentiary to the Court of St. James, his reëlection as Governor of Massachusetts having been lost by a single vote:—

TO HON. EDWARD EVERETT.

Cambridge, May 30th, 1840.

MY DEAR SIR:

I very sincerely thank you for your kind letter, which I received yesterday. I hope yet to see you before your departure for Europe, although from my constant occupations and doubtful health, I am far less able to command my time for the purposes of visiting my friends, than formerly.

It was my intention, as soon as the recent contest for the Gubernatorial chair was decided, to have written you a letter

on the subject, expressive of my views, and in bare justice to you. I was prevented from so doing, by my ill health at Washington, at the close of the late term of the Supreme Court. I now desire to say what I then should have said: I felt the deepest humiliation and mortification at your non-election, not on your own account, but on account of my native State, and I may add, also, of my country. The loss was ours, not yours. The cares of State could be little more than a burden and sacrifice on your part; but your occupying the station was an honor to us, and for the solid good and glory of the Commonwealth. You lost the election from no error, and no mistake of judgment; it was one of those odd and strange outbreaks of popular caprice and popular delusion, brought on by the rashness and indiscretion of the Legislature, for which you were not, and ought not to be, in any degree, responsible.

When I look back upon your administration, I do it with feelings of lofty pride and unmixed pleasure. It was all I could have wished. It was wise and patriotic, guided by the right spirit and the right principle, conducted with a deep regard for morals and justice, and infinitely removed above the injustice and the follies of mere party. It was just such as a Christian magistrate ought to pursue, and a Christian people feel a pride in supporting. To have a scholar and a gentleman, second to none among us, in all the attributes of taste and genius and learning, our Governor, was to me, I confess, a source of exultation. To see him rejected by the people, when his fame had been among their best possessions, was to me a startling proof of their frail and unsteady judgments, and a lesson of the gratitude of Republics, which has come over my heart with many saddened thoughts respecting our future prospects. You can have nothing to regret in all this; but we have much for lamentation and bitter sorrow. . . .

My dear sir, allow me to say one word more respecting yourself. You have, I trust, many years before you, of health

and labor. What I desire, is, that, in addition to the many beautiful, ay, exquisitely beautiful specimens of your genius, which we have had upon occasional topics, you would now meditate some great work for posterity, which shall make you known and felt through all time, as we, your contemporaries, now know and esteem you. This should be the crowning future purpose of your life. *Sat verbum sapienti.* If I should live to see it, I should hail it with the highest pleasure. If I am dead, pray remember that it was one of the thoughts which clung most closely to me to the very last.

May God bless and preserve you and your family, and return you to the welcome of your country and your friends, is the warm desire of

Your affectionate friend,

JOSEPH STORY.

The following interesting interchange of letters took place at this time, between Mr. Justice Coleridge and my father:—

TO MR. JUSTICE STORY.

Montague Place, Bedford Square, }  
December 26th, 1839. }

DEAR SIR:

. . . In the last vacation I read attentively your essay on the Conflict of Laws, and it is no flattery to say, that I have read no modern treatise of our own production with any thing like the pleasure and instruction it gave me.

I think you would be pleased with the feeling which exists in our Courts at present in respect to American Jurisprudence. It is one of the highest respect; we do not, indeed, allow your reports to be cited as authority, but that is, I believe, out of consideration to the Bar, who are already overburdened with the expensive and troublesome multiplicity of our own reports.

Yours, &c.,

J. T. COLERIDGE.



TO HON. MR. JUSTICE COLERIDGE.

Cambridge, May 30th, 1840.

SIR :

I beg to return you my sincere thanks for your kind letter, which, though dated as long ago as December 26th, 1839, did not reach my hands until a few days ago; and I hope you will deem this my apology for not having before answered it. I will not disguise how sensibly I am affected by the favorable manner in which you are pleased to speak of my judicial writings, and by the approbation with which they have been received by the English Bar. I am free to confess that this circumstance was unexpected on my part, and is still more gratifying to me personally on that account. Considering the vast amount of studies, which necessarily devolve upon the English Bar and Bench, and the constant engagements which press them on every side, I was prepared to expect that they could devote little attention to the works of foreign jurists, and especially to those who were cultivating the science of Common Law in America. But it is less a circumstance of gratification to me personally, that the contributions which I have been able to make towards the discharge of that duty which all lawyers owe to their profession, have attracted some attention abroad, than it is of a more enlarged consciousness that England and America, the admirable parent and the advancing child, should thus be brought to feel more closely and more vividly the strong ties that bind them together, by the possession of a common Jurisprudence and common institutions. What nobler triumph has England achieved, or can she achieve, than the proud fact that her Common Law exerts a universal sway over this country, by the free suffrages and the voluntary homage of all its citizens? That every lawyer feels that Westminster Hall is in some sort his own? That not a single decision is there promulgated, but becomes almost within a month an additional stock to the possession of every Ameri-

can lawyer, to guide his judgment and to assist his inquiries? I am sure, that considerations and influences of this sort constitute a bond of union which must exist for the mutual benefit of both countries, as long as they possess a common language. May I venture to prophecy more, that this very language of our mother land is destined, in the good providence of God, to become the general medium of communication among all the nations of the earth; and to make the laws of England upon commercial subjects the general groundwork of all commercial jurisprudence everywhere.

I have been insensibly led to these remarks, and I am sure that they cannot fail to be appreciated as far as they have any just foundation on your side of the Atlantic.

It may not be wholly uninteresting to you to know, that in America we are well acquainted with your own professional writings. In the law library of Cambridge, and in that of the Supreme Court at Washington, which is very copious and good, there is a copy of your edition of Blackstone's Commentaries, which some years ago, upon my recommendation, was placed there. During the last two winters, while I was in attendance at the session of the Supreme Court at Washington, I found leisure to read through in the first year the first two volumes, and in the last year the last two volumes of Blackstone's Commentaries with your own notes. It was more than thirty years since I had regularly read through Blackstone, and I was induced to the labor (I will not call it a task) by my desire to peruse your notes. Allow me to say, that I have been very highly gratified by them; you have edited the work in the only manner in which justice to that great man's fame required it to be done. You have corrected the errors, illustrated the text, and qualified and added to his general doctrines, in a manner beautifully adapted to the purposes of his work, and in the style in which the author would have done it, if living. With the exception of Mr. Christian's, every other edition has, it seems to me, marred the symmetry and disfigured the proportions of the

pages of Blackstone. The common-places of our indexes and the marginal notes of the reporters, seemed to have been poured upon his text with a most barbarous profusion of ill-digested comments.

I read some time ago, with great satisfaction the decisions of the Court of King's Bench, in 6 Adolphus and Ellis, 829-862, on the subject of Corporations; and the references there made to our American decisions were such as could not fail to be most welcome to the American Bar. It is now nearly thirty years since the same question came for the first time before the Supreme Court of the United States, soon after I took my seat there, and the decision then pronounced, which it fell to my lot to deliver, has been universally adopted as the leading rule in America ever since. The Judges all then thought that, first or last, we must come to the adoption of the general doctrine, that whenever a Corporation is acting within the scope of the legitimate purposes of its institution, the parol contracts of its authorized agents are express contracts of the Corporation itself, upon which assumpsit will lie; and that all duties imposed upon a Corporation by law, and all services performed at its request, raise implied promises binding on the Corporation. It seems to me that any other rule would be found highly injurious to, if not destructive of, the rights of a vast mass of persons dealing with corporations. Take an incorporated bank, which receives deposits from its customers, from day to day, or an insurance company receiving a premium upon a policy where no risk attaches, if the rule does not exist to this extent, the party dealing with the corporation is utterly without redress at law. I confess myself, therefore, exceedingly gratified that in the very satisfactory judgments in the King's Bench, the technical difficulties have been thoroughly examined and overcome.

My general course of thinking led me a good deal to doubt the decision in *Doe v. Vardell*, and I have sometimes thought that it might have a tendency to break in upon the doctrines of the Incidents of Marriage, according to the law of the

place where it is celebrated, in a manner full of public inconvenience. Still, I must admit that the subject is not unattended with difficulties, and I await with interest the final decision of the Lords.

Nothing would afford me greater gratification than to visit England. Truly, from the bottom of my heart, upon touching its soil, I should exclaim, *Salve, magna parens—magna virum!* The great obstacles which I have to overcome, are my perpetual round of duties, professorial and judicial.

There has been recently published in America, a new edition of my work on Bailments, with large additions. I beg you to accept the copy which I shall transmit, as a mark of my great respect for your character and attainments.

Believe me, with the highest respect, your faithful and much obliged servant,

JOSEPH STORY.

A present from Mr. Wigram<sup>1</sup> of his able treatises on Points in the Law of Discovery, and on the Admission of Extrinsic Evidence in the Interpretation of Wills, was acknowledged by the following letter:—

TO JAMES WIGRAM, ESQ., ONE OF HER MAJESTY'S COUNSEL, ETC.

Cambridge, July 23d, 1840.

SIR:

I had the great pleasure of receiving a short time ago the copies of your works on Points in the Law of Discovery, and on the Admission of Extrinsic Evidence in the Interpretation of Wills, which you had the kindness to send me. I can truly say, that no present could have been more acceptable to me, or have afforded me more sincere gratification. I hope that you will allow me to say, what is my real opinion, that they are works of extraordinary merit, ability, and learning, and

<sup>1</sup> Now Vice-Chancellor Wigram.

eminently useful to the profession. The work on *Discovery* I had read with great care in the first edition, and it is highly improved in the second. I confess that my own private judgment went along with yours as to the leading principle of the work. Upon principle, (however it may stand upon authority,) I have found it difficult to understand how the manner in which the defendant refers to his own title, and documents in support thereof, can give the plaintiff any right to any discovery of that title or the documents, to which otherwise he would not by law be entitled. My general habit of obedience, however, to authority, makes me less sure in my own judgment on this point than I should otherwise feel I ought to be.

The other work I had not before an opportunity of reading. It is highly instructive and satisfactory, and of constant practical use. I have been greatly puzzled by the authorities on this subject, apparently in conflict with each other on many occasions. You have done much to clear the doctrine of its doubts and difficulties. I have long been satisfied that the Courts have in some cases gone too far in the admission of extrinsic evidence, and especially of parol evidence, in the interpretation of wills. It is a favorable moment to get back to the true principle, and to retrace our false steps. . . .

I beg you, to believe me, with the highest respect, truly  
your most obliged friend and servant,

JOSEPH STORY.

Two interesting pamphlets, by Edwin W. Field, Esq. of London, are thus acknowledged by my father:—

TO EDWIN W. FIELD, ESQ.

Cambridge, July 24th, 1840.

DEAR SIR:

I return you my sincere thanks for your kindness in sending me your two pamphlets, the one on the *Organization* and

Practice of the offices attached to the Equity Courts, and the other on the Law respecting Marriages abroad, by English subjects, within the prohibited degrees. I have read them both with very great pleasure and no small instruction. That respecting the Equity Offices and the system of costs, is full of new information to me, for in the comparatively simple practice in our Equity Courts, such a vast apparatus and complicated machinery are scarcely known. It is impossible to overlook the importance of your suggestions, and the manliness, as well as the intrinsic force of your appeal to the profession for some effective remedies on this subject. Such a system could not exist in America, without calling forth legislative interference to prevent delays, to lessen costs, and to give simplicity to proceedings. Indeed, I am well persuaded from my own experience as an Equity Judge, that a thorough revision of the whole system is indispensable to a due administration of public justice. And I am sure that the whole practice of the Courts can be extensively and beneficially simplified; but I should be led too far were I to pursue this topic; and it would be impracticable for me to explain my views without more time than I can devote to the purpose.

The other topic is eminently important, and is growing more and more so, in a practical sense, every day. It appears to me that every nation will soon be compelled to yield up some portions, perhaps large portions, of their own municipal regulations on the subject of marriages, in order to meet the new exigencies of society arising from the great extent to which intermarriages now take place between the subjects of different countries, in foreign places. In America I have no doubt that our Courts will be compelled, from a sense of public convenience, as well as international comity, to hold marriages abroad to be generally valid and good by their local law, wherever the question of their validity may afterwards be contested, as well with regard to their own subjects as with regard to foreigners. The exceptions will practically be reduced to the narrowest space, and include only such cases

as clearly, in the sense of all Christians, are contrary to Christian morals.

I shall certainly avail myself of your valuable labors in the next edition of my work on the Conflict of Laws, which I am now preparing for the press. I hope that my health may allow me to complete the revision during the next autumn.

I am, with the highest respect,

Truly, your much obliged friend and servant,

JOSEPH STORY.

The election of General Harrison as President took place during this year. The views of my father as to the course his administration should take, are thus stated :

TO RICHARD PETERS, ESQ.

Cambridge, December 4th, 1840.

MY DEAR SIR :

Somehow or other your letter of the 8th of November slipped from my memory amidst my various and almost distracting duties in Court and out of Court ; and I now catch the passing moment to thank you for it, with a certainty that if I do not write you now, the tide of pressing business will sweep away this among other unexecuted wishes and intentions.

I hope that the Court will have a harmonious session ; and I am sure that the Chief Justice and a majority of my brethren will do all that is proper to accomplish the purpose. The change in the Administration will produce no change in my own conduct. I mean to stand by the Court and do all I can to sustain its dignity and the public confidence in it. Indeed, I should think myself utterly inexcusable if I could be brought to act otherwise.

The new Administration will go into power under favorable auspices ; but after all, there are many delicate and difficult duties which it will have to perform. The selection of

the heads of departments will be important, and yet not without embarrassment. I hope General Harrison will take advice freely from his friends on this point. It is exceedingly important to the success of his Administration. If I were in either Clay's or Webster's situation, I should decline office and remain in the Senate. If I did not decline office, I should choose to go abroad. We want a Secretary of the Treasury of tried principles and discretion and sagacity, to restore the finances; an Attorney-General of acknowledged ability and learning; a Secretary of State of great caution and sound judgment. The times are critical.

Already public confidence begins to revive, and with it public credit. Business is beginning to work out of its sluggish channels. The Administration must make many removals from offices in order to restore things to a state of honest confidence, and of right and justice. But I hope General Harrison will firmly state that while he will remove all those who have abused the functions of their offices for party and political purposes, he at the same time will remove no other man for opinion's sake, who has been honest and is capable. I hope General Harrison will require Congress again to take the purse-strings in their own hands, and to demand back what they have so unconstitutionally surrendered to Jackson and Van Buren. The power of removal may, and ought to be regulated by Congress. . . .

Give my love to all your family, and believe me,

Truly and affectionately yours,

JOSEPH STORY.

In acknowledgment of a copy of Mr. Dana's "Two Years before the Mast," my father writes as follows:—



TO RICHARD H. DANA, JR., ESQ.

Cambridge, October 14th, 1840.

MY DEAR SIR:

Few things could have been more acceptable to me than your kind present of your work, "Two Years before the Mast." I have had but little time to run over its various contents, and that only by short snatches and glances; and I mean to peruse it carefully in some of the long evenings which are now approaching. It is full of interest and full of truths important to be known and felt throughout the whole community. I think that it will attract general attention, and receive high praise from all those who seek to aid the cause of a gallant, friendless, hardy, and thoughtless race of men, whose sufferings are too little understood as yet to obtain public sympathy. Your work will do great good in this view, and warm in their cause many who have hitherto looked on them with listless indifference. Your concluding chapter is full of just remarks, written in the right spirit, and cannot fail to strike every reflecting mind. Owners and masters of ships require to be enlightened, as well as seamen, on this subject. Make the seaman feel that he has a deep stake in character, in morals, in religion, in education, and half his temptations to do wrong, and more than half the temptations to do him wrong, will be at once done away. I have ever felt a deep interest in seamen; for in my early youth, I was their companion, and often in their society in the fishing town where I was born; and some of my nearest relatives began life in the humblest office on ship board, and gradually rose to the highest.

Truth, it has been said, is stranger than fiction. Your book shows that it has a deeper and more thrilling interest. I can only desire that its circulation may be as wide as its merits.

Believe me, with the truest respect,

Affectionately your friend,

JOSEPH STORY.

The next year was quite as busy as the preceding. New editions of the works on Bailments, on Equity Pleadings, and on the Conflict of Laws, were prepared by my father, upon which he spent much labor. The second edition of the Conflict of Laws swelled to nearly double its original size, and was made so much more full and complete, that, compared with it, the first edition seems to be but a sketch.

How, with all the labors of the intermediate years, my father had found time to make the wide explorations into Continental Jurisprudence, and to acquire the large and accurate knowledge of its principles and practice, that is shown in the second edition, it is difficult to understand. Yet, no one, in comparing them, can fail to perceive the superiority of the later edition, in learning and research.

The mere examination of the proofs and revises of these republications, was, in itself, no light task; and when it is considered, that the two works on Bailments and Equity Pleadings were increased in size about one third, it would seem that little time could be left beyond what was consumed by judicial and professorial duties, and the conducting of a large correspondence. But, when also it is taken into consideration, that my father never employed an amanuensis or secretary, generally making even his own indexes, and always personally revising every proof-sheet, it seems wonderful, that he should have found time before going to Washington, to make considerable progress in the composition of a new work on the Law of Partnership. Such, however, was the fact. Thus crowded with work, flowed on his life, his zeal growing like fire, by what it fed on.

The following letter, received at this time, relates to the Commentaries on the Conflict of Laws : —

TO HON. MR. JUSTICE STORY.

Lincoln's Inn, December 15th, 1838.

DEAR SIR :

At all events, I am gratified with the occasion it affords me, of expressing my high respect for you, and my deep sense of the obligations which you have conferred on the Jurisprudence and Jurists of Europe, as well as of your own country, by those valuable treatises which you have given us. They have been read by me, with increased advantage and with increased respect, for the extensive learning and sound judgment of the author, and for the admirable, skilful, and lucid arrangement, with which he has been enabled to unfold so much to his readers.

Among the other excellencies of your Commentaries on the Conflict of Laws, I have never been able to express what I feel on the singular facility with which you have accomplished that, which, according to the plan of your work, was most difficult, namely, the illustration of the principles by which the selection of the appropriate law should be determined.

Your very obedient and humble servant,

WILLIAM BURGE.

## CHAPTER VIII.

### PROFESSORIAL AND JUDICIAL LIFE.

CASE OF UNITED STATES *v.* THE AMISTAD — DEATH OF MR. JUSTICE BARBOUR — SKETCH OF HIM — PUBLICATION OF COMMENTARIES ON PARTNERSHIP — LETTER OF BARON PARKE — DEDICATION TO HON. SAMUEL PUTNAM — LETTER ON DR. TUCKERMAN — LETTER ON REFORM OF THE ENGLISH CHANCERY PRACTICE — LEGISLATIVE BILLS — LETTER OF MR. DANA — LETTERS FROM MONS. FÉLIX, MR. JUSTICE PATTESON, BARON GURNEY, PROFESSOR MITTERMAIER, BARON PARKE, AND HERR VON SAVIGNY — PETERS *v.* WARREN INSURANCE COMPANY — LETTER OF LORD DENMAN.

AMONG the judgments delivered by my father during the session of the Supreme Court of 1841, is that in the celebrated case of the United States *v.* the Amistad, the circumstances of which were as follows:—The schooner Amistad, owned by Spanish subjects, cleared from Havana for Puerto Principe, having on board fifty slaves, owned by the captain and three passengers. On the voyage, the negroes rose, killed the captain, took possession of the vessel, brought her into Long Island, where they anchored her off Culloden Point, about a mile from the land, and a part of the negroes went ashore. While the schooner lay here, she was discovered by Lieutenant Gedney, of the United States brig Washington, who seized her and the negroes on board and on shore, brought her into Connecticut, and libelled her for salvage. The claimants of the negroes

also filed libels against them, asserting them to be slaves, and praying that they should be delivered up to their owners, or to the representatives of Her Catholic Majesty. The Attorney-General of the United States also filed a libel, setting forth that the Spanish minister had made a claim for the restoration of the slaves, the cargo, and the vessel, as being the property of Spanish subjects in the jurisdiction of the United States, under such circumstances as rendered it the duty of the United States, under her treaty with Spain, to surrender them.

The negroes filed an answer, denying that they were slaves, and specially setting forth, that they were free and native born Africans, who, on the 15th of April, 1839, were unlawfully kidnapped and carried to the Island of Cuba, where their professed owners, knowing the premises, bought them, and placed them on board of the *Amistad*, to transport them to some place unknown to them, to be enslaved for life; in consequence of which, they rose upon the master and killed him, and took possession of the vessel, intending to return to Africa, or to seek an asylum in some free State.

Libels were also filed by the owners of the vessel and cargo.

The principal question arose under the ninth article of the treaty, which provides "that all ships and merchandise, of what nature soever, which shall be rescued out of the hands of any pirates or robbers on the high seas," shall be restored to their proprietors on due proof. The questions, therefore, were, whether, first, the negroes, under the circumstances, were merchandise in the sense of the treaty; and secondly, whether they had been rescued from pirates and robbers; and thirdly, whether

the persons asserting ownership, were, in fact, the true proprietors, and had made out their title.

It was held, that the evidence showed the negroes not to be slaves, they having been kidnapped in Africa, and unlawfully transported to Cuba; that they could not be deemed pirates or robbers, since they were entitled to the liberty which they retook, and were illegally restrained on board the *Amistad*; that they were not merchandise in the sense of the treaty, but were persons, any conflict as to whose rights "must be decided upon the eternal principles of justice and international law." The negroes were, therefore, declared to be free, and were dismissed from custody to go without day.

This case created great excitement at the time, and was the subject of an eloquent pamphlet written by Dr. W. E. Channing, vindicating their rights, and the mode by which they regained their liberty.

The circumstances of the sudden death of Mr. Justice Barbour, while in attendance on the Court during the session, are stated in the following letter:—

TO MRS. JOSEPH STORY.

Washington, February 28th, 1841.

MY DEAR WIFE:

I now write to acknowledge the receipt of your last letter, and to tell you of the sad event of the death of Mr. Justice Barbour, which has spread a great gloom over the Court and almost disabled us from doing any business. His death was indeed awfully sudden. He was in good health and attended Court all Wednesday, and heard the extraordinary argument of Mr. Adams in the case of the *Amistad*; extraordinary, I say, for its power, for its bitter sarcasm, and its dealing with topics far beyond the record and points of discussion. He

dined heartily, and remained with the Judges in conference until after ten o'clock in the evening, and then in a most cheerful humor. The next morning the servant went into his room between six and seven o'clock and made his fire, perceiving nothing unusual and supposing him to be asleep. About an hour afterwards the messenger with letters knocked at his door, and hearing no answer went in softly, supposing him asleep, and laid a letter upon his table and withdrew. At nine o'clock the servant called us all to breakfast, and upon going into his room, finding him still in bed, he went to him and found that he could not awaken him. He was frightened, and ran into my room and told me he feared Judge Barbour was dead. I went immediately and found him lying on his left side and lifeless. His eyes were closed, his feet stretched out, and his arms in a natural position. His forehead, hands, feet and limbs were perfectly cold, but upon feeling his breast, I discovered that it was still warm. We sent immediately for Dr. Sewall, who came and said that he was indeed dead, and that he must have died of *angina pectoris*. Probably he breathed his last about daylight, and while he was yet asleep. From all appearances, he must have died without any struggle and instantaneously. We were all thrown into utter confusion, and I sat down to a most melancholy breakfast, seeing on my side the deserted chair in which he used to sit. We went to Court at eleven o'clock, where the Chief Justice announced the event, and the Court was at once adjourned until Monday.

On Friday his funeral obsequies were performed in the Supreme Court room where two days before he sat, having apparently a stronger claim to life than nearly all of his brethren. He would have been fifty-eight years of age if he had lived until May next. He was a man of great integrity, of a very solid and acute understanding, of considerable legal attainments, (in which he was daily improving,) and altogether a very conscientious, upright, and laborious Judge, whom we all respected for his talents and virtues, and his

high sense of duty. When I reflect upon the sudden manner in which he was called from us, I could not help feeling the affecting truth of Mr. Burke's remark, "What shadows we are and what shadows we pursue." Horace, nearly nineteen hundred years ago, used an equally expressive exclamation,— "*Pulvis et umbra sumus.*" This event has quite broken up all our arrangements, and we shall certainly adjourn, and, indeed, we have so agreed, on the 10th of March. . . .

My own health continues growing better, though I have had for a few days past, in consequence of the state of the weather, a slight cold. I am now about to go out and avail myself of one of the few days we have had here of a bright and balmy sky.

I am most truly and affectionately yours,

JOSEPH STORY.

The following sketch of Mr. Justice Barbour was afterwards drawn up by my father:—

"The family from which Judge Barbour was descended, was one of the oldest and most respectable in Virginia. His great-grandfather was a merchant of Scotland, who immigrated to this country. His grandfather was the pioneer and first settler of the country lying between the eastern base of the Blue Ridge and the Southwest mountains. His father, Thomas Barbour, inherited considerable wealth, and was a member of the old House of Burgesses, from the then very large county of Orange. He was one of those who, in 1769, signed the 'Non-Importation Act' between this country and Great Britain. After the formation of the Union, he was elected to the Legislature. Richard Henry Lee, in a letter to his brother, Arthur Lee, bore testimony to his worth, to the effect, 'that he was glad that Thomas Barbour was in our state councils, for he was a truly intelligent and patriotic man.'

"On the maternal side, as his name indicates, Judge Bar-



bour was related to the Pendleton family, his grandmother having been the aunt of the distinguished Judge Pendleton. Philip Pendleton Barbour was born on the 25th of May, 1783. Owing to his great hospitality, and a long series of disasters, his father was unable to afford him that liberal education which his talents and early promise would have justified. He was, however, sent early to school, where he soon developed many of those qualities for which he was afterwards so justly distinguished. He exhibited great aptitude for the acquisition of languages; and, with a correct taste and strong memory, sought out and retained through life the beauties of the Greek and Roman classics. Even in the performance of the tasks of a country school, he manifested that precision of information and depth of research, which, on a broader theatre, and carried to higher subjects, won for him a wide-spread and enduring reputation. He remained at school until the end of 1799. During the early part of 1800, he studied law at home; but in October, he determined to visit Kentucky, where, under great difficulty and embarrassment he commenced the practice of law. In the summer of 1801, he yielded to the persuasions of his friends to return to Virginia; and, having borrowed the necessary funds, spent one session at William and Mary College. In 1802, he resumed the practice of law in Virginia. In October, 1804, he was united to Frances T. Johnson, daughter of Col. Benjamin Johnson, of Orange county, Virginia. During the next eight years he applied himself unceasingly to his profession. In 1812, he was elected to the Assembly, where he continued two sessions. In 1814, he was elected to Congress, where he continued until 1825. While there, he was chairman of the Naval and Judiciary Committees; and in 1821, was chosen speaker of the House of Representatives. About the year 1825, the University of Virginia went into operation. He was offered the professorship of law in that institution, and was pressed by Mr. Jefferson to accept it. He refused this station, however, and was appointed a Judge of the General

Court of Virginia. In 1827, at the written request of a majority of his old constituents, he resigned his seat on the Bench, and was reëlected, without opposition, to Congress. In 1829, together with the illustrious Madison, he was chosen to represent the county of Orange, in the convention called to amend the constitution of Virginia. He presided over the deliberations of this body in a manner which elicited the approbation of its members. He was also president of the Anti-Tariff Convention which met in Philadelphia. In 1830, he retired from the practice of a profession which had yielded him considerable wealth, and of which he had been one of the brightest ornaments, and accepted the station of Federal Judge for the eastern district of Virginia. The chancellorship was offered to him and declined; as was also the post of Attorney-General. He refused the nominations for a seat in the Court of Appeals, the gubernatorial chair, and the Senate of the United States. As Federal Judge, he won new honors, and showed himself worthy of the high and enviable station to which in 1836 he was called, that of Associate Judge of the Supreme Court of the United States. Having thus reached the height of the profession which he had chosen, he was unweariedly striving, with a virtuous ambition, to win that fame which great ability can only give when joined with pure principles, when death cut him off in his useful career, and robbed our country of one of its most distinguished sons.

“ It remains for us to take a brief notice of the professional attainments and judicial character of Mr. Justice Barbour. It has been already seen that no inconsiderable portion of his life was employed in active political duties and pursuits, which if not incompatible with, are (to say the least) by no means favorable to the cultivation of juridical knowledge, or to found a solid reputation in the law. He did not, however, at any time relax his vigilance in his professional studies, or become indifferent to professional success. On the contrary, he had the ambition to acquire all the knowledge which might

be useful in his practice at the bar, and the persevering firmness to surmount every intervening obstacle. His mind was in a remarkable degree acute, sound, and discriminating, inclining to subtilty in disquisition, but not misled by it. He was earnest, candid, patient, and laborious in all his investigations; quick to discern the real points and merits of a case; but slow in arriving at his own conclusions. His talents were of a high order; but he was distinguished less for brilliancy of effort, than for perspicacious, close, and vigorous reasoning. He sought less to be eloquent than to be accurate; less to persuade by declamatory fervor, than to convince by clear and logical deduction. The learning, therefore, that he brought to the discussion of every cause, was pertinent, exact, and illustrative. It had point and force, and not merely remote or loose analogies to give it effect. When he was elevated to the Bench, he felt a deep and conscientious sense of his new duties; and was solicitous to master all the learning appropriate to discharge them in the best manner; and especially, after his appointment to the Bench of the Supreme Court, he devoted his leisure, with strenuous diligence, to attain all the various knowledge demanded for eminence in that station. Few men ever labored with more entire success in such a noble pursuit. During his brief career in that Court, he widened and deepened the foundations of his judicial learning to an extraordinary extent; his reputation constantly advanced, and his judgments were listened to with increased respect and profound confidence. If he had lived many years with good health, he could not have failed to have won the highest distinction for all those qualities which give dignity and authority to the Bench. It might be truly said of him, that he was not only equal to all the functions of his high station, but above them, — *par negotiis, et supra* —. His country has lost by his death a bright ornament, and a pure and spotless patriot.”

In the early part of the year 1841, the Commentaries

on Partnership were issued from the press, and were received by the profession with the same approbation that had been accorded to the previous works. The exposition of this subject, which is noted for its intricacy, is very luminous, and the subtle distinctions and principles by which it is governed are developed with great clearness and learning.

The following letter from Baron Parke, the eminent English Judge, is in acknowledgment of a copy of this work :—

TO HON. JUSTICE STORY.

London, March 1st, 1841.

DEAR SIR :

I have to return you my sincere thanks for the honor you have done me, by sending me a copy of your recent work on the Law of Partnership. The partial perusal of it, which I have already made, satisfies me of its great merit, and leaves no doubt that it will form another claim, in addition to the many you have already acquired, to the gratitude of the professors of the law on both sides of the Atlantic.

Permit me to assure you of my sincere respect, and to beg that you will believe me to be

Your obliged and faithful servant,

J. PARKE.

This work was dedicated to Mr. Justice Putnam, whose pupil in the law my father had been, with the following letter:

TO HON. SAMUEL PUTNAM, LL. D.

Cambridge, November, 1840.

SIR :

It is with great satisfaction that I dedicate this work to you. It is devoted to the exposition of a branch of that great

system of Commercial Law, which constituted a favorite study in your early professional life, and which, since your elevation to the Bench, you have administered with eminent ability and success. No one, therefore, is better qualified than yourself to appreciate the importance and difficulty of such a task, and the indulgent consideration to which even an imperfect execution of it may be fairly entitled. But I desire, also, that this dedication may be deemed, on my part, a voluntary tribute of respect to your personal character, adorned as it is by the virtues which support, and the refinements which grace the unsullied dignity of private life. I recollect with pride and pleasure, that I was your pupil in the close of my preparatory studies for the Bar; and, even at this distance of time, I entertain the most lively gratitude for the various instruction, ready aid, and uniform kindness by which you smoothed the rugged paths of juridical learning, in mastering which an American student might then well feel no little discouragement, since his own country scarcely afforded any means, either by elementary treatises or reports, to assist him in ascertaining what portion of the Common Law was here in force, and how far it had been modified by local usages, or by municipal institutions, or by positive laws.

I trust that you may live many years to enjoy the honors of your present high station; and I may be allowed to add, that, out of the circle of your own immediate family, no one will be more gratified than myself in continuing to be a witness of the increasing favor with which your judicial labors are received by the public, and of your possession of that solid popularity, which (to use the significant language of Lord Mansfield) follows, and is not run after, in the steady administration of civil justice.

I am, with the highest respect, truly,

Your obliged friend,

JOSEPH STORY.

The next letter was in answer to a wish expressed by

Edwin W. Field, Esq. in a letter to my father, that he would give him his views as to any reforms which might advantageously be made in the practice of the English Chancery Courts.

TO EDWIN W. FIELD, ESQ.

Cambridge, January 12th, 1841.

DEAR SIR :

I owe you an apology for not having before answered your letter, which I received a month or two ago, and which I read with great interest. The truth is, that I am but just off my Circuit Court duties, having been employed therein for nearly the whole of the last three months with many very difficult questions of law to dispose of in my brief leisure.

I am greatly obliged to you for the pamphlets which you have so kindly sent me. They are very instructive, and those upon second marriages with a wife's sister, I should have used in the new edition of my work on the Conflict of Laws, if they had arrived while the part of the work which touched that subject was in the press. Nothing is more common in almost all the States of America than second marriages of this sort, and so far from being doubtful as to their moral tendency, they are among us deemed the very best sort of marriages. In my whole life I never heard the slightest suggestion against them, founded on moral or domestic considerations.

I rejoice greatly at the late Act of Parliament authorizing the Lord Chancellor to alter, amend, and modify the whole course of Chancery pleadings and practice; never was a reform of any sort (at least so far as one at a distance might presume to form an opinion) more called for by public policy and duty. I am sure that the task could scarcely be placed in hands more competent than Lord Cottenham's to make it thorough and satisfactory in its fulfilment.

It seems to me utterly impossible for a person on this side

of the Atlantic to be able to form any just opinion of what the proper reforms should be; for to do this with judgment, prudence, or effect, requires one to have long seen the practical workings and arrangements of the complicated machinery of your system. I have not the rashness therefore to suppose that I can place before you any suggestions which I might not be disposed to reform or modify if I were intimately acquainted with the details of your system. Ours in America is so very different in its practical arrangements, and withal so simple in its details in most of our Courts of Equity, that we are apt to be misled by the supposition that it could be well engrafted upon yours; perhaps on such a subject the best maxim is "*festina lente*."

Nevertheless, I will venture to make a few suggestions which have occurred to my mind. I believe that I have before stated to you that I think the Court of Chancery could be most advantageously remodelled and divided into independent and rival courts, like your own courts of Common Law, the Chancellor, the Chief Baron, the Master of the Rolls, the Vice-Chancellor, and any new Vice-Chancellors to be added, each sitting in a distinct court, and an appeal lying from each court, not to the House of Lords, but to an appellate court composed of all the Chancery Judges, and of which (*ex officio*) the Chancellor should be the first and the presiding Judge. I could say much on this topic if it were one which respected the Chancery jurisdiction in America.

But to proceed to the subject of pleadings and practice, it seems to me that no reform will be permanently useful, which does not at once speed causes, lessen expenses, and simplify processes and proceedings. Let me suggest some modes of accomplishing these ends. 1st. As to Bills, they should contain nothing more than the narrative part, which should be disposed of in distinct and brief articles, so that the answer might, without repeating the articles, be required to respond to each article by its number fully and distinctly, and should not, in respect to such article, be allowed to sup-

ply any deficiency by reference to any other part of the answer. The prayer of the bill should be for general relief only, and the Chancellor might in special cases direct the plaintiff to specify in writing what special or peculiar relief he asked, either before or at the hearing.

The interrogatory part of the bill (except so far as it requires an answer on oath, and this might be dispensed with at the option of the plaintiff,) to be dispensed with; but the plaintiff to be at liberty to examine the defendant on oath as he might any other witness, on interrogatories to be propounded to him in writing, and answered in writing. The examination, when practicable, to be in the presence of the parties or their solicitors, in the examiner's office or under the commission, so that where the answer to a particular interrogatory is defective or unsatisfactory, new interrogatories touching the matter may be instantly put and answered.

If the answer to the interrogatories should be unsatisfactory or evasive, the bill to be taken *pro confesso* to the extent thereof, unless the Chancellor should order a reëxamination.

No cross bill to be necessary to be filed by the defendants to establish any of the matters of defence stated in the answer; but the defendant to have a right to examine the plaintiff, in like manner upon interrogatories as to all or any of the matters in the bill and answer. The defendant to be at liberty to pray relief on his side as to the matters of defence set up in his answer in opposition to the bill, and the court in its discretion to have the right to grant it as fully as it could upon a cross bill.

All documents and papers referred to in the bill and answer to be referred to as in a schedule annexed, and the parties, the dates, and briefly the objects of the documents to be stated in the schedule; either party to be at liberty to have a copy thereof at large at his own expense if he required it, and all the documents and papers lodged for a reasonable time in the proper office for inspection. The parties to be at liberty to require an order from the court on the other party,



to state whether he means to contest the execution of any particular document or not; and if he contests it without good cause, the court to have authority to award costs occasioned thereby.

All testimony of witnesses to be taken upon interrogatories in writing, put in the presence of the parties or their agents, and they to be at liberty to file supplemental interrogatories before the Commissioner at the moment, so as to elicit all the facts and circumstances. This is now, I believe, the universal practice in America. Certainly it is so in all the States with which I have any acquaintance. The parties attend before the Commissioner and put all such questions as they please, referable to the points in issue; and very often they dispense with the filing of any prior interrogatories. The whole evidence is therefore perfectly known to both parties in the progress of the cause, and long before what is technically called publication; there is not a single Commissioner at a time, who takes the testimony. This practice, so far from being productive of inconvenience, is deemed highly useful, and indeed makes the evidence approach very nearly to *vivâ voce* evidence in the cause. It seems to me, also, that the Chancellor, at his discretion, should have authority to examine witnesses *vivâ voce* at any stage of a cause, where he should deem it proper for the purposes of justice.

The answer should be required to be put in at a short, fixed period after service of process, and the time should be enlarged only by the court upon cause shown, upon default to answer; the bill should be liable to be taken *pro confesso*, and the matter thereof decreed accordingly, without any issue of process of contempt unless for the purposes of justice. An answer should become positively indispensable, and then it might be enforced. This is our American practice, and we find no difficulty in it. It cuts down at once all unnecessary delays.

There is one other subject which strikes me to be of very great importance. It is, that there should be fixed days for

the Court to sit, as it were, at chambers, to hear motions and make orders in all causes. Orders, which are of course, should be passed by the proper officer of the Court, without any applications to the Court itself. Motions should be *vivâ voce*, unless directed by the Court to be in writing; and instead of written notices of motions served on the parties and proved by affidavit, a short notice, posted up in the proper office for a fixed number of days, should be *per se* notice of motion, which would supersede the necessity of other notices.

In my own circuit of Equity causes, I hear the parties on a motion *vivâ voce*, in open Court; the Solicitors on each side taking notice thereof without delay; and I make the order, or vary it, or deny it, without any formal proceedings whatsoever, and frequently dictate to the Clerk the very terms of the order, at the instant when it is made. When the Bar are once trained to this course, they are pleased with it, and find it saves so much time and expense, that they seek to accommodate each other in the arrangement of their business. It would probably be found useful to have all the Judges in rotation, except the Lord Chancellor, sit at chambers for this purpose, and the same rules should prevail in all the Courts.

In respect to the abolition of the proceedings in the Master's office, I confess that it has not appeared to me necessary, and indeed I think that he is a most important and necessary auxiliary of the Court in taking accounts and auxiliary inquiries. What is wanted is, that there should be a thorough reform in the mode of proceedings in the Master's office. In America there is rarely any delay, and he proceeds very much as a Judge in Court. If upon any important question he were to certify the point and facts to the Court for its opinion, from time to time, in the progress of his inquiries, so that the Court might give the proper direction, much time might be saved.

It strikes me also that a very great portion of all the Chancery business preparatory to the final hearing of the cause,

might be, and should be, managed by the solicitors alone. This would, I am persuaded, elevate the character of that portion of the Bar, and would be a most salutary measure in its general influence. It is constantly so done in most of the States of America; or rather, to put the case exactly as it generally is, every solicitor is a counsellor, and every counsellor acts at times as a solicitor. We find no inconvenience from this course.

There is another thing which, I know not if it could be adopted in England, but which we act upon here in most of the States. There is in many of the States a Court of Chancery in each county, where all the proceedings originate, and a decree is had from which an appeal is had to the highest Court. This very soon creates an able local Bar, by whom business is exceedingly well managed, so that the small causes rarely get into the appellate Court. Would it be practicable with you to have a Chancery office open at all times in each county, where all the preliminary proceedings to the final hearing might be had under the direction of the Court, by a master, or other proper officer, reserving the final decision for Westminster Hall? If it would, I am persuaded that an intelligent local Bar would soon arise, which would relieve suitors from much delay and expense.

It appears to me, also, that Bills which are almost of course, might be heard summarily on petition, such as creditors' and Administration Bills, and the proper references made without delay. In consent causes, the Court might hear the parties upon short petition and make the necessary orders at once. I am by no means sure that much more might not be done to prevent useless litigation; as, for example, by a petition to show cause why a Bill should not be filed, which, if the Court thought it either maintainable or unmaintainable, might be summarily disposed of by consent of the parties. But of this I should speak with more hesitation, as I have no experience to aid my judgment. But after all, I fear that much reform cannot be made without striking at the root of the present

mode of taxing costs. If costs are to be paid upon all orders, and for all copies, and per page for all pleadings, item per item, there is infinite temptation to multiply papers as well as delays. If a fixed allowance of moderate amount were made for every Bill and answer, without reference to length or space, if the sum for all orders in a cause including all proceedings and evidence should never be allowed beyond a fixed sum, except upon a fiat of the Court upon a very special case shown, much might be done to stop all useless delays. If the Court were authorized to deprive either party of costs who was guilty of unreasonable delays in the cause, this would have an excellent tendency the same way.

I would also suggest, that all the forms and common orders made in causes, should be printed and sold, for use, at the lowest prices, and taxable in the costs only at that price. In the Supreme Court of the United States, we have also required all the records to be printed before the cause is heard, and this is done at the expense of the Government. Three copies of these records are ultimately, with the decree rendered in the case, placed in the proper office, and constitute the proper record of the Court, without any other transcript or emolument. A prodigious expense is thus saved, and the record of each case, and all the cases, is thus preserved in printed volumes easily accessible and easily read. We deem it the best possible security of the records. Printed copies are furnished to each of the parties and to the Court, at a comparatively trifling expense. The great cheapness of printing now, will in this way materially diminish the expenses in all suits.

But after all, I am sure that no reform can be productive of any great good, unless the Judges earnestly and zealously devote themselves to the business of the Court, and especially to sweeping away the obstacles to a speedy and unexpensive mode of terminating suits. I believe nothing will do this so effectually as the establishment of rival, independent Courts, with an authority in the Chancellor from time to

time to equalize the business of each Court, by transferring suits from one Court to the other.

There is yet another subject upon which I wish the Court might be aided. The jurisdiction in Equity is in many cases but ill defined, and there are great anomalies in its exercise. In America, if a cause is once properly in Equity, in point of jurisdiction for any one just purpose, and the relief to be given is such as a Court of Equity may properly give, we go on and give the relief, although it might otherwise be given at Law. Thus, if a case otherwise fit for a decree in Equity, is before the Court for discovery, and discovery is obtained, we go on to give the appropriate relief, although there might be relief at Law.

As to parties also, the present Rules in Equity are inconvenient, and in some cases occasion a total failure of justice. Why not say at once that the question of parties shall rest in the discretion of the Court, and that in all cases the Court may proceed to decree between the parties before the Court, without prejudice to the rights of persons not parties; and that other persons, not made parties, but having an interest in the case, might intervene in the cause for their own interest *pro tanto*, and become parties *inter sese*, at any proper stage of the suit, to protect those interests. A recent statute of our Congress has authorized the Courts of the United States to proceed in Equity cases as between the parties before the Court, without prejudice to other parties, and has thus in a great measure broken down the old rule as to parties. The new rule seems to work well as far as we have as yet had any experience under it.

There are many other suggestions of a practical nature which might deserve consideration, but I am so entirely conscious that it is impossible for me fully to understand the operations of your system without an intimate knowledge of, and practical experience in your Equity Courts, that I fear lest much which I have already suggested may appear rash, inexpedient, and at all events doubtful in its tendencies and

results, and much that works very well in our system, might after all be found impracticable, if not mischievous, with you. I pray you, therefore, to consider what I have written as mere hints for consideration, and not as propositions which are entirely satisfactory to my own mind. Indeed, to confess the truth, I have felt all along that I might be deemed obtrusive in intermeddling at all with these matters with which I am so imperfectly acquainted. The general habit of my mind is, *stare decisis*, unless I feel very clear that the change will not be innovation merely, but reform.

Most of the suggestions in your letter as to reform, strike my mind at once very favorably. Of some I entertain doubts. I am by no means sure that a change in the rules of evidence would on the whole favor the general purposes of justice. If all sorts of evidence might be put into a case, there seems to me great danger that it will raise too many collateral issues, and protract the cause and swell the mass of evidence inconveniently. Some of the more artificial rules of evidence might, as it strikes me, be most advantageously altered. The doctrine of incompetency of witnesses is now pushed to an extent which excludes much evidence that might otherwise advance by its admission the purposes of justice.

In Administration suits, your suggestion of a deputy and solicitor elected by the creditors to conduct the whole cause, strikes me as very valuable. Why might not the Court from time to time decree a partial distribution of the funds among the creditors whose debts are undisputed, or are established, retaining enough to satisfy the litigated claims? Why might not such litigated claims be stated in a case from time to time, for the opinion of the Court, or for a trial by jury, if necessary? Why, instead of the present mode of appointment of masters, might not a master be appointed for each Court, to hear and dispose of all cases referred to him as an assessor and assistant Judge, and subject to appeal to his principal official? He might sit at the same time as his principal, and hold an open Court.

I have thus, in a rambling manner, in compliance with your request, stated my first impressions as to what may be done usefully, by way of reform in Chancery proceedings. In conclusion, I must ask that this letter may be deemed strictly private and confidential, except to those gentlemen (such as Mr. Wigram) who may feel a very direct interest in knowing how these matters are managed in America. I desire that the public might not have even a pretence to suppose that I have intermeddled in affairs which can be best understood and best managed by the learned and able lawyers of Westminster Hall.

The Supreme Court of the United States has authority to prescribe rules to regulate the practice in Equity causes, in all the inferior Courts. In pursuance of this authority, certain rules were framed, which are now in force in all the circuits; they are very general, and of course require supplemental rules to be adopted by the inferior Courts. I have thought you might wish to see these rules, and herewith shall send you a copy.

I beg you to believe me, with the highest respect,  
 Your much obliged servant,  
 JOSEPH STORY.

The following letter was written to me when I was engaged in the study of the law:— .

TO MR. WILLIAM W. STORY.

Washington, February 9th, 1841.

MY DEAR SON:

I am glad that you are at length quietly settled in Boston. It is exactly as I expected, a striking transition to pass from the literary world and the home department. It reminds me strongly of my own case, when escaping from the walls of college, of a sudden I found myself in a lawyer's office among the dusty rubbish of former ages; for at that time there were

few elementary works to smooth the passage, and from reading the classical work of Blackstone, I had immediately to plunge into the dark pages of Coke on Littleton. I could say with Spelman, that my heart sunk within me. But it was only the first plunge which cost me much effort; and having once got fairly into the stream, I paddled along as well as I might, and became encouraged with the hope of success.

You are now beginning to see the actual business of human life, not only what men think, but what they do, their absorbing interests, exciting cares, and marvellous devotion to the every day round of business connected with petty and embarrassing details. Your boarding-house will show you the materials of common conversation, the gossip, and the hopes and fears, and ambitious pursuits of the day; and your office the varied sources of human litigation, cunning, and suffering. . . .

I am very glad to hear that James Lowell's work<sup>1</sup> succeeds. I saw a notice (a *quasi* review of it) in the Daily Advertiser, written, I suppose, by you, which appeared to me well done, and just. The specimen of the work you give, the prelude to it, if I remember right, struck me as very chaste and very beautiful. It had the freshness of a mind that drew from its own sources. I am tired, as well as yourself, of the endless imitations by American poets of the forms and figures, and topics of British poetry. It is time we had something of our own.

Yesterday was the day assigned for General Harrison's entry into this city. It was snowing and raining alternately during the whole day, and yet vast crowds were assembled at the depôt of the railroad to meet him. He arrived a little after eleven o'clock, and his reception was as warm as so gloomy an atmosphere and so cool a day would permit. He remains here only for a day or two, and then proceeds to Vir-

<sup>1</sup> *A Year's Life*, by James Russell Lowell.



ginia, whence he will return in due season for the inauguration, which, if the day is good, will probably be one of the most imposing spectacles ever exhibited.

. . . I have not found a single book here, which I could read, by way of amusing my leisure; but happening the other day to be at Mr. Webster's, I saw an old edition of Horace, (published one hundred years ago) which I borrowed, and have been reading more than one half of the odes. After all, there is little material in Horace. His principal merit is a certain gracefulness and elegant turn of phrase, and a light-hearted cheerfulness. But he was a mere fawning sycophant and courtier, and according to his own account of the matter, as gross a debauchee as lived in his day.

Yours affectionately,

JOSEPH STORY.

My father's old friend and College chum, Rev. Joseph Tuckerman, died during this year, and a discourse upon his life and character was delivered by his distinguished classmate, Rev. Dr. Channing. Upon the publication of this discourse, Dr. Channing wrote to my father, asking him to furnish a letter of reminiscences of Dr. Tuckerman, to be printed in the Appendix. The following answer was sent:—

TO THE REVEREND W. E. CHANNING, D. D.

Cambridge, April 10th, 1841.

MY DEAR SIR:

I comply very cheerfully with your request, although I could supply very few reminiscences of our late lamented classmate and friend, the Rev. Dr. Tuckerman, which are not already familiar to your mind. During our collegiate life, my acquaintance with him was but slight, until my junior year, when he became my chum; and so pleasant and confidential

was our intercourse during that year, that we should undoubtedly have continued chums during the remainder of our college studies, if some family arrangements had not made it convenient for him to adopt a different course. The change, however, did not prove the slightest interruption of our intercourse and friendship; and I feel great gratification in saying, that, from that period until the close of his life, I am not conscious that there was on either side any abatement of mutual affection and respect; and whenever and wherever we met, it was with the warm welcome of early and unsuspecting friendship.

Many of the characteristics, so fully developed in his later life, were clearly manifested when our acquaintance first commenced. During his college life he did not seem to have any high relish for most of the course of studies then pursued. He had an utter indifference, if not dislike, to mathematics, and logic, and metaphysics; and but a slight inclination for natural philosophy. He read the prescribed classical writers with moderate diligence, not so much as a matter of taste or ambition, as of duty, and as a task belonging to the recitation room,—the Latin being uniformly preferred to the Greek. And yet I should not say, that he was idle, or indolent, or without a strong desire of improvement. His principal pleasure lay in a devotion to the more open and facile branches of literature, and especially of English literature. History, moral philosophy, poetry, the drama, and the class of studies generally known by the name of *belles-lettres*, principally attracted his attention; and in these his reading was at once select and various. The writings of Addison, Johnson, and Goldsmith, were quite familiar to him. The historical works of Robertson, and Gillies, and Ferguson, and other authors distinguished in that day, as well as the best biographical works, were within the range of his studies. In poetry he was more attached to those who addressed the feelings and imagination, than to those who addressed the understanding, and moralized their song in the severe language and condensed expression

of truth, or the pungent pointedness of satire, or the sharp sallies of wit. Gray's Bard, and Collins's Ode to the Passions, were his favorites; and above all, Shakspeare, in whose writings he was thoroughly well read; and often declaimed many of the most stirring passages with the spirit and interest of the dramatic action of the stage. Young's Night Thoughts seemed to be almost the only work, which from its deep and touching appeals, and elevated devotion, and darkened descriptions of life, and sudden bursts of eloquence and enthusiasm, made him feel at that time the potency of genius employed in unfolding religious truths. He possessed, also, a singular readiness and facility in composition, perhaps what would by some persons be deemed a dangerous facility. What he wrote, he threw off at once in appropriate language, rarely correcting his first sketch, and not ambitious of condensing or refining the materials by successive efforts.

I have thus far spoken of his taste and intellectual pursuits and attachments in our college life. But what I most delight to dwell on are his warm-hearted benevolence, his buoyant and cheerful temper, his active, sympathetic charity, his gentle and frank manners, and above all, that sunniness of soul, which cast a bright light over all hours, and made our fireside one of the pleasantest of all social scenes. So uniform, indeed, was his kindness and desire to oblige, that I do not remember a single instance, in which he ever betrayed either a hastiness of temper or a flash of resentment. He was accustomed to distribute a portion of his weekly allowance among the poor, the friendless, and the suffering. His love of morals and virtue was as ardent, as it was elevated. His conduct was blameless and pure. I do not believe, that he ever wrote a word, which, dying, he could wish to blot on account of impurity of thought or allusion; and his conversation was at all times, that which might have been heard by the most delicate and modest ears. Occasionally, his buoyancy of spirits might lead him to indulge in giddy dreaminess, or romantic fervors, such as belong to the untried

hopes and inexperience of youth. But it might with truth be said, that, even if he had any failings in this respect, they leaned to virtue's side.

I confess, however, that the opening of his literary career did not then impress me with the notion, that he would afterwards attain in his profession and character the eminence, to which every one will now deem him justly entitled. He seemed to want that steadiness of purpose, which looks difficulties in the face, and overcomes obstacles, because a high object lies behind them. His mind touched and examined many subjects, but was desultory and varying in its efforts. I was in this view mistaken; and I overlooked the probable effects upon a mind, like his, of deep religious sensibility, and, if I may so say, of an enthusiasm for goodness, when combined with a spirit of glowing benevolence.

When we quitted college, our opportunities of familiar intercourse, from the wide diversity of our pursuits, as well as from our local separation, were necessarily diminished. I saw him only at distant intervals, while he was engaged in his preparatory studies for the ministry; and when, on entering his study one day, I found him reading Griesbach's edition of the New Testament with intense attention, and in his comments on it in our conversation, discoursing with a force and discrimination, which showed the earnestness with which he was endeavoring to master his profession, a new light struck upon me, and I began to perceive that he was redeeming his time, and disciplining his thoughts to the highest purposes. During his residence at Chelsea, after his settlement there, I saw him frequently, either at Salem, where I then resided, or at Chelsea, where I took occasion, on my visits to Boston, to pass some time at his house. His improvement was constantly visible; his studies more expanded; his knowledge more exact, as well as various; and his piety, that beautiful ornament so deeply set in his character, shining forth with its deep, mild, and benignant light. I remember, that for a long time, Tucker's *Light of Nature* was one of his

favorite studies; and he made it the theme both of his praise and his criticism at many of our meetings. It was while he was at Chelsea, the minister of a comparatively small and isolated parish, that he nourished and matured the great scheme of his life and ambition, the Ministry at Large for the Poor. I need not dwell upon its beneficial effects, or its extraordinary success. I deem it one of the most glorious triumphs of Christian charity over the cold and reluctant doubts of popular opinion. The task was full of difficulties, to elevate the poor into a self-consciousness of their duty and destiny, and to bring the rich into sympathy with them; to relieve want and suffering without encouraging indolence or sloth; to give religious instruction, where it was most needed, freely and without stint, and thus to widen the sphere, as well as the motives to virtue, among the desolate and the desponding. It was, in fact, doing what Burke has so beautifully expressed;—it was to remember the forgotten.

But I am wandering from my purpose, and speaking to one who fully understands, and has eagerly supported this excellent institution—and yet, I think, you will agree with me in saying, that its establishment and practical success were mainly owing to the uncompromising zeal, and untiring benevolence of Dr. Tuckerman. It was the crowning labor of his life, and entitles him to a prominent rank among the benefactors of mankind.

I do not know any one, who exemplified in his life and conduct a more fervent or unaffected piety, than Dr. Tuckerman did. It was cheerful, confiding, fixed, and uniform. It was less an intellectual exercise than a homage of the heart. It sprung from a profound feeling of the mercy and goodness of God. It was reverential; but at the same time filial. His death was in perfect keeping with his life; it was a good man's end with a good man's Christian resignation, hope, and confidence.

It was in the summer which preceded his death, that, on his recovery from a severe illness, he rode out to Cambridge.

He came to my house, and in his warm, yet anxious manner, said to me, "I could not pass your house, my friend, without desiring to see you once more before I died. I have been very ill, and, as I thought, very near to death. But I was tranquil and resigned, and ready to depart, if it was God's good pleasure. And I felt no fears." He stayed with me some time, as long as I would allow him in his then feeble state of health. He talked over our long friendship, our youthful doings, our advancing years. And when we parted, he bade me a most affectionate farewell. It was our final farewell—I saw his face no more.

I send you, my dear sir, these hasty sketches, such as they are. I cannot suppose that there is any thing in them which would not have occurred more forcibly to others, who knew Dr. Tuckerman. But I was unwilling to withhold my tribute to the great excellencies of his character, his zeal in all good works, and his diffusive benevolence.

"His saltem accumulem donis, et fungar inani  
Munere."

Believe me, truly and affectionately,

Your classmate and friend,

JOSEPH STORY.

The next letter exposes some of the "secret service" which my father, throughout his life, was rendering to the legislation of the country.

TO RICHARD H. DANA, JR., ESQ.

Washington, July 9th, 1841.

MY DEAR SIR:

I am much obliged to you for your kind letter; and I have punctiliously attended to its objects. On my arrival here, I found that the bill which I drew last year, giving to the Dis-

trict Courts jurisdiction over all offences against the United States not capital, and enlarging the powers of the Court in cases of maritime offences, had passed the Senate and was before the House of Representatives. I have spoken to the chairman of the committee, (Mr. Seargent,) who has promised to do all he can to get the bill passed. I shall also speak to other gentlemen; but I think that a few letters from Boston to some leading members here, such as Mr. Winthrop, Mr. Saltonstall, Mr. Caleb Cushing, &c., would do good.

I have also prepared a bill, which has been reported by Mr. Wall, (chairman of the Judiciary Committee of the Senate,) that passed to a second reading in the Senate, authorizing the District Judge, &c., to bind over the witnesses for the accused as well as for the prosecution, and allowing them, if committed, the same pay (to be paid by the Government) as other witnesses, during their detention. If there is any time left in the session to get the bill through the House, I think this bill also will pass. I purposely left out of it any clause requiring the grand juries to serve for a year, &c.; as this might occasion debate, and the object might not be well understood; and if the other bill passes, the District Courts may overcome the whole difficulty by adjournments at short periods under the existing laws, retaining the regular grand juries. I shall use my efforts to press the passage of the bills.

Believe me, with the highest respect, truly

Your obliged friend,

JOSEPH STORY.

Of this Act, Richard H. Dana, Jr., Esq., thus speaks in the letter of May 3d, 1851, before quoted from:—

“The letter of July, 1841, which I send you, related to the Act of 23d August, 1842, which was passed by his instrumentality. It has been, as you are aware, very beneficial in

its operation upon seamen, especially in the section relating to the recognizance of witnesses, which no one but a Judge thoroughly versed in the wants and difficulties of seamen in their causes could have contrived.

“Having, by the accident of my voyage, been brought a good deal into connection with seamen in the Courts, I can cheerfully bear testimony to your father’s uniform attention to their peculiar needs, and untiring efforts to secure to them, by rules of Court and decisions, or by procuring the enactment of statutes, the fullest and fairest opportunities to obtain justice, under the misfortunes of their condition as litigants. The Crimes Act of 1835, which inflicts a penalty upon a master or officer for cruel or unusual punishment of seamen, or for unjustifiably imprisoning seamen, or withholding from them suitable food and nourishment, is his work. This statute is the one on which the indictments are now framed, and it has been the great shield to seamen against the oppression of their officers. In his Circuit, which is the great maritime district of our country, he has developed and built up, by his decisions, a system of legal principles and rules of practice, securing to seamen the prompt payment of their wages, medicines and care in sickness, good treatment in performance of duty, and protecting them against unreasonable forfeitures, discharges in foreign ports, imprisonments, and advantages taken of them in their contracts, not only creditable to his humanity, but founded in truest and largest reasons of public policy.”

Among the letters received by my father during this year, are the following, which show the estimation in which he was held abroad as a jurist. The first letter is from Monsieur Foelix.



TO HON. JOSEPH STORY.

Paris, le 22 Février, 1841.

MONSIEUR :

J'ai reçu il y a quelque temps votre ouvrage, *Equity Jurisprudence*, 2d vo., 2d edition. Recevez mes remerciemens de cet envoi, qui m' a mis à même de me faire une idée juste de ce que c'est que la juridiction d'Équité en Angleterre et aux États Unis. Les livres que j'avais été à même de consulter jusqu'ici ne m'avaient donné qu'une idée confuse de cette juridiction, inconnue sur le continent Européen. En effet, après la réception de votre ouvrage, je me suis immédiatement occupé à le lire, et je ne m' étonne plus que la première édition, quoique tirée à 1500 exemplaires, a déjà été épuisée en 1839 ; car votre ouvrage, vous me permettrez de le dire, comme tous ceux qui sont sortis de votre plume, réunit à un haut degré l'exposition méthodique, la clarté, et la précision (nécessaires à celui qui désire y puiser les élémens de la matière) à des détails étendus qui sont nécessaires au jurisconsulte pratique. J'ai rédigé un article pour la Revue, dans laquelle je donne une analyse succincte de cet ouvrage, afin de faire mieux connaître en France et la matière et votre travail. Recevez l'assurance de la haute considération avec laquelle j'ai l'honneur d'être.

Votre bien dévoué serviteur,

FELIX.

The next letter is from Mr. Justice Patteson.

TO MR. JUSTICE STORY.

London, 33 Bedford Square, April 26th, 1841.

SIR :

I beg to return you my best thanks for a copy of the new edition of your valuable work on the Conflict of Laws. It is, as I hope you well know, a standard work to which we constantly refer in this country, and which will never be for-

gotten. It is a great gratification to me to communicate even in this short way with one for whom I have so high a respect, and I wish that some good fortune might enable me to see and personally thank you for your present.

Yours, very sincerely,  
J. PATTESON.

The next letter is from Baron Gurney.

TO HON. JOSEPH STORY.

London, June 10th, 1841.

SIR:

I have again to acknowledge with gratitude, the present of another of your invaluable works, by which you have conferred such great obligations both on your own country and ours.

It makes England justly proud of her American sons to see them competing on equal terms with her ablest writers.

I am, sir, with great respect and esteem,  
Your very faithful servant,  
JOHN GURNEY.

The next letter is from Professor Mittermaier.

TO HON. JOSEPH STORY.

Heidelberg, le 1 Juillet, 1841.

MONSIEUR:

J'ai reçu, il y a trois semaines, les exemplaires de votre excellent ouvrage "*On the Law of Agency*," et de la seconde édition de votre intéressant ouvrage "*On Bailments*." Il m'empresse de vous exprimer mes remerciemens les plus sincères. Occupé d'un ouvrage sur le droit commercial, je puis profiter des fruits que l'étude de votre ouvrage me fournit. Il n'y a pas un ouvrage en Allemagne qui traite

la matière si difficile, de *Principal and Agent*, d'une manière si profonde et si claire que le votre. . . .

J'ai reçu, il y a huit jours, votre lettre de 22 Avril, dans laquelle vous m'annoncez l'arrivée d'un exemplaire de votre ouvrage (nouvelle édition) sur le Conflit des Lois. Agréez, Monsieur, mes remerciemens. Vous ne cessez pas de nous enrichir des excellents ouvrages. Je suis très curieux de posséder bientôt l'exemplaire de cet ouvrage, qui est reconnu aussi en Allemagne, comme l'ouvrage classique auquel les jurisconsultes de tous les pays doivent recourir.

Agréez l'assurance du profond respect, avec lequel j'ai l'honneur d'être,

Votre tout dévoué.

MITTERMAIER.

The next letter is from Baron Parke, one of the ablest Judges of the English Bench.

TO HON. JOSEPH STORY.

London, July 11th, 1841.

Baron Parke presents his compliments to Dr. Story, and begs to return his best thanks for the present which he has received of the new edition of the admirable work on the Conflict of Laws, a work which, with the Treatise on Bailments and that on Agency, has justly raised the name of its author to the highest degree of reputation with the profession of the law, and Baron Parke adds his expressions of a sincere wish that Dr. Story may long enjoy a life which he devotes so sedulously to the improvement of the sciences of which he is such an ornament.

The next letter is from Herr Von Savigny, the very distinguished jurist of the Roman Law. It was addressed to Mr. Fay, our accomplished Secretary of Legation, and at various times Chargé des Affaires at Berlin.

A MONSIEUR THEODORE S. FAY.

Berlin, le 28 Novembre, 1841.

MONSIEUR :

Je m'empresse de vous exprimer mes remercîmens de la bonté que vous avez eu de me remettre l'ouvrage de M. Story.

Depuis long temps, je connais et j'estime votre savant compatriote comme un homme qui fait le plus grand honneur à sa double patrie, je veux dire à l'Amérique et à la Jurisprudence. Je connais même la première édition de cet ouvrage, dont le haut mérite est généralement reconnu, et qu'il a eu l'attention de m'envoyer. C'est donc avec un double plaisir que je recois ce précieux ouvrage dans une forme encore perfectionnée. Je vous prie d'exprimer à votre illustre compatriote combien je suis sensible au nouveau présent qu'il lui plu de me faire, et qui est de la plus haute importance pour mes études.

Agrérez, Monsieur, l'assurance de ma consideration la plus distinguée.

SAVIGNY.

The third volume of Mr. Sumner's Reports, containing the Judgments of my father in his Circuit, was published in the year 1841. This volume is particularly rich in Admiralty and Insurance Cases, one of the most important of which, is *Peters v. The Warren Insurance Company*. In this case, in consequence of an accidental collision between two ships, one of them was forced to go into port for repairs, and the question arose, whether the expenses of the repairs were chargeable to the underwriters, on the ground of general average or consequential injury, arising from a peril of the seas. It was held, that they were. In discussing the question, whether the amount of damage apportioned on the

ship, resulted so proximately from the collision, as to found a claim for indemnification against the underwriters, the meaning and application of the maxim, *Causa proxima non remota spectatur*, is fully considered, and the decision of the Queen's Bench, pronounced by Lord Denman, in the case of *De Vaux v. Salvador* (4 Adolph. and Ellis, 420,) is reviewed at length, and dissented from.

Lord Denman, in the following letter to Charles Sumner, Esq., written after reading this judgment, makes a declaration, which all, who are familiar with the decisions of the English Courts, will recognize as a tribute to a foreign jurist, of an almost unprecedented character.

TO CHARLES SUMNER, ESQ.

Middleton, September 29th, 1840.

MY DEAR SIR:

Your report of Judge Story's sentiments on our decision in *De Vaux v. Salvador* had not escaped my memory, and his now recorded judgment makes me regret, that we did not grant a rule to show cause, that a full discussion of the point might have been had. If it should arise again, the case of *Peters v. The Warren Insurance Company* will, at least, neutralize the effect of our decision, and induce any of our Courts to consider the question as an open one.

Pray offer my best respects to Judge Story, and assure him, that nothing in my judicial life has given me more pleasure than to know that the proceedings of the Court of Queen's Bench in the *Privilege* case have met with his approbation. It is highly gratifying to receive his elucidation of the passage quoted from our *Year Books*. For my part, I never doubted that the legal authorities, reasonably interpreted, compelled us to decide as we did; but I certainly felt serious apprehen-

sions, lest the apparent weight of authority should embarrass the Court, and render it less sensible of the simplicity and importance of the principle involved. The effect of a contrary decision would not have been confined to England, but we should have stood forth in shameful preëminence, an example for every judicature in every country to conform its decisions to the will of the ruling power, whether an absolute monarch, or a popular assembly. . . .

You speak of yourself as having incurred a debt of gratitude to the Bar of England and myself, and express a wish for some opportunity of testifying your feelings. Be assured that for every attention we could offer we were more than repaid by the pleasure of your society and conversation. But you may show us that kindness which we all highly estimate by repeating your visit; and if you could persuade Judge Story to accompany you, we should be delighted to receive him in a manner in some degree answerable to his ability, learning, and character. . . .

Very sincerely, yours,

DENMAN.

## CHAPTER IX.

### PROFESSORIAL AND JUDICIAL LIFE.

#### CASE OF PRIGG *v.* THE COMMONWEALTH OF PENNSYLVANIA.

OF the cases which came before the Supreme Court in 1842, one here deserves particular notice, namely, *Prigg v. The Commonwealth of Pennsylvania*. The question, which arose in this case, was in respect to the construction of the article in the Constitution relative to the delivering up of "persons held to service or labor in one State under the laws thereof, escaping into another." As the judgment in this case excited a considerable interest at the time, and was severely animadverted upon by some persons,<sup>o</sup> and as it involves a great constitutional question, it seems to demand in this place some special consideration. The facts of the case were these :

"The plaintiff in error was indicted, in the Court of Oyer and Terminer for York county, for having taken and carried away from that county to the State of Maryland a certain negro woman, named Margaret Morgan, with a design and intention of selling and disposing of and keeping her as a slave or servant for life, contrary to a statute of Pennsylvania, passed on the 26th of March, 1826. That statute, in the first section, in substance provides, that if any person or persons from and after the passing of the Act, shall take, carry away, or seduce any negro or mulatto from any part of that commonwealth, with a design and intention of selling and disposing

of, or causing to be sold, or of keeping and detaining, or of causing to be kept and detained, such negro or mulatto as a slave or servant for life, or for any term whatsoever, — every such person or persons, his or their aiders or abettors, shall, on conviction thereof, be deemed guilty of a felony, and shall forfeit and pay a sum not less than five hundred, nor more than one thousand dollars; and, moreover, shall be sentenced to undergo a servitude for any term or terms of years, not less than seven years, nor exceeding twenty-one years; and shall be confined, and kept to hard labor, &c. There are many other provisions in the statute which is recited at large in the record, but to which it is unnecessary to advert to.

“The plaintiff in error pleaded not guilty to the indictment; and, at the trial, the jury found a special verdict, which in substance states, that the negro woman, Margaret Morgan, was a slave for life, and held to service and labor under and according to the laws of Maryland, to a certain Margaret Ashmore, a citizen of Maryland; that the slave escaped, and fled from Maryland into Pennsylvania, in 1832; that the plaintiff in error, being legally constituted the agent and attorney of the said Margaret Ashmore, in 1837, caused the said negro woman to be taken and apprehended, as a fugitive from labor, by a state constable, under a warrant from a Pennsylvania magistrate; that the said negro woman was thereupon brought before the said magistrate, who refused to take further cognizance of the case; and thereupon the plaintiff in error did remove, take, and carry away the said negro woman and her children out of Pennsylvania into Maryland, and did deliver the said negro woman and her children into the custody and possession of the said Margaret Ashmore. The special verdict further finds, that one of the children was born in Pennsylvania, more than a year after the said negro woman had fled and escaped from Maryland.

“Upon this special verdict, the Court of Oyer and Terminer of York county adjudged that the plaintiff in error was guilty of the offence charged in the indictment. A writ of



error was brought from that judgment to the Supreme Court of Pennsylvania, where the judgment was, *pro forma*, affirmed. From this latter judgment the present writ of error has been brought to this Court."

The question in this case was simply this, — whether this Act of Pennsylvania was or was not void as being in contravention of the following provision in the Constitution of the United States: "No person held to service or labor in one State under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due."

The judgment in this case was, — that Congress under the Constitution had exclusive power to legislate in respect to fugitive slaves; that the States had no power to legislate on the subject, either in violation of the provisions of the Constitution or in furtherance and extension of it; that, therefore, the Act of Pennsylvania was unconstitutional and void; that the United States could not oblige the States to carry out and enforce its laws through their magistrates, but must depend on its own proper Courts and officers; that the right of the owner to recapture his slave wherever he may be, is given him by the Constitution without restriction, and that, therefore, he may take him wherever he finds him, provided he can do it without illegal violence or breach of the peace; but if he cannot, he is bound to resort to the manner and means specified in the Act of Congress, passed in furtherance of the Constitutional clause referring to fugitive slaves.

The reasoning, by which this judgment was established, was to the following effect:—This article in the Constitution, as it is well known historically, was the result of a compromise, and formed a fundamental condition of the adoption of the Constitution by the Slave States. It is absolute and unqualified in its terms. It was an agreement by all the States, free and slave-holding, to surrender all their special rights and regulations over the subject, and to secure to every slave owner the right to retake his slave in every State.

It is to be interpreted so as consistently with the words fully and completely to effectuate its whole objects. “If by one mode of interpretation the right must become shadowy and unsubstantial, and without any remedial power adequate to the end, and by another mode it will attain its manifest purpose, it would seem, upon principles of reasoning which are irresistible, that the latter ought to prevail. No court of justice can be authorized so to construe any clause of the Constitution as to defeat its obvious ends, when another construction, equally accordant with the words and the sense thereof, will enforce and protect them.”

This clause in the Constitution is of two parts. First, it confers an absolute right without qualification or restriction. “No person, &c. shall in consequence of any (State) law or regulation be discharged.” Every State law or regulation, therefore, which abridges this right, or operates to discharge the slave by interruptions, or limits the right of the owner to the immediate possession of his slave, violates the guaranty in the Constitution.

This clause does not qualify the right of the owner to

his slave who has escaped from the State, but extends the rights which he has in his own State over his fugitive slave to every other State. Consequently, the incidents to such rights attach to it equally in all the States. As, therefore, it is universally acknowledged in the slave-holding State, that a master has a right to seize and recapture his slave there, he has it also in all other States. The only question, then, is, how may he retake his slave by Common Law.

On this point, Blackstone lays down the following doctrine as unquestioned :—

“Recaption or reprisal is another species of remedy by the mere act of the party injured. This happens when any one hath deprived another of his property in goods or chattels personal, or wrongfully detains one’s wife, child, or servant ; in which case the owner of the goods, and the husband, parent, or master, may lawfully claim and retake them wherever he happens to find them, so it be not in a riotous manner, or attended with a breach of the peace.”

“On this ground,” the opinion continues, “we have not the slightest hesitation in holding, that under and in virtue of the Constitution, the owner of a slave is clothed with entire authority, in every State in the Union, to seize and recapture his slave whenever he can do it without any breach of the peace or any illegal violence. In this sense, and to this extent, this clause of the Constitution may properly be said to execute itself, and to require no aid from legislation, state or national.”

Thus far the clause has contemplated that the owner can peaceably retake and seize his slave in like manner as other “property.” But this may not always happen.

His slave may be concealed or forcibly withheld. And the local law of the State may be inadequate to enable him to enforce legal process in its Courts, or to repossess himself of the slave, or may prohibit its Courts from any jurisdiction in the premises, and therefore the clause proceeds to state that the slave "shall be delivered up on claim of the party to whom such labor or service is due," in like manner as the law provides that the owner shall have legal process to recover property withheld from him, which he cannot peaceably retake.

But this clause, although it confers the right to make a claim, and the duty to deliver up the slave, does not define the form and mode in which such claim shall be made; and the question to whom the claim shall be made—how it shall be enforced—to whom the slave shall be delivered—what evidence shall be necessarily conclusive—and what Court the action shall be brought in,—are questions which are not answered, and which demand to be defined by legislation.

Now this clause is in the national Constitution, and is a national guaranty. It is not in a State Constitution; it does not make requisition upon any State functionaries, or any State action, to carry its provisions into effect. "The States cannot, therefore, be compelled to enforce them. It might well be deemed an unconstitutional exercise of the power of interpretation to insist that the States are bound to provide means to carry into effect the duties of the national government, nowhere delegated or intrusted to them by the Constitution. On the contrary, the natural, if not the necessary conclusion is, that the national government, in the absence of all positive provisions to the contrary, is bound, through its

own proper departments, legislative, judicial, or executive, as the case may require, to carry into effect all the rights and duties imposed upon it by the Constitution."

"It is plain, that where a claim is made by the owner, out of possession, for the delivery of a slave, it must be made, if at all, against some other person; and inasmuch as the right is a right of property, capable of being recognized and asserted by proceedings before a court of justice, between parties adverse to each other, it constitutes, in the strictest sense, a controversy between the parties, and a case 'arising under the Constitution' of the United States, *within the express delegation of judicial power given by that instrument*. Congress, then, may call that power into activity for the very purpose of giving effect to that right; and, if so, then it may prescribe the mode and extent in which it shall be applied, and how, and under what circumstances, the proceedings shall afford a complete protection and guaranty to the right."

And this has been done. The Act of Congress passed on February 12, 1793, ch. 51, (7,) after providing that fugitives from justice shall be delivered up by the executive authority of the State, upon demand to him, proceeds, in the third section, to provide, that when a person held to service or labor in any of the United States, shall escape into any other of the States or Territories, the person to whom such service or labor may be due, his agent or attorney, is hereby empowered to seize or arrest such fugitive from labor, and take him or her before any Judge of the Circuit or District Courts of the United States, residing or being within the State, or before any magistrate of a county, city, or town corporate wherein such seizure and arrest shall be made, and, upon

proof to the satisfaction of such judge, or magistrate, either by oral evidence or affidavit, &c., that the person so seized or arrested, doth, under the laws of the State or Territory from which he or she fled, owe service or labor to the person claiming him or her, it shall be the duty of such judge or magistrate to give a certificate thereof to such claimant, his agent or attorney, which shall be a sufficient warrant for removing the said fugitive from labor to the State or Territory from which he or she fled.

This Act covers the whole ground of the Constitution as to fugitive slaves, and points out all the modes of proceeding in respect thereto which Congress had judged expedient or advisable, and if constitutional, it must supersede all State legislation on the same subject. For if Congress have a constitutional power to regulate a given subject, and they do actually regulate it in a given manner and form, the subject is as clearly established by its omissions, as by its actual provisions, and it is not competent to a State Legislature to pass additional or auxiliary laws and regulations, since that would be to make the Act of Congress more extensive and different in its effect, and would virtually alter the law.

It has been objected that this Act is unconstitutional, because it does not fall within the enumerated powers of legislation given to Congress. The argument, stripped of its artificial structure, comes to this, that although rights are exclusively secured by, or duties exclusively imposed upon, the national government, yet, unless the power to enforce those rights or to execute those duties can be found among the express powers of legislation enumerated in the Constitution, Congress cannot give.

them effect, even though they become a nullity, through want of a proper remedy to enforce them, or to provide against their violation. This construction has, however, never been adopted in theory or practice. But, on various occasions, Congress has exercised powers which were necessary and proper as means to carry into effect rights expressly given, and duties expressly enjoined. And, indeed, in the part of this clause relating to fugitives from justice, this power has been exerted, and Congress has declared to whom application shall be made, that matter being left undecided by the Constitution—an exercise of power which has always been acquiesced in and upheld. So, also, the power of Congress to pass the foregoing Act in relation to fugitive slaves has been judicially affirmed in repeated instances, and uniformly acquiesced in throughout the whole Union, until a very recent period. And if contemporaneous exposition and long acquiescence constitute any proof that such a power exists, it may safely be said to exist in the present case.

“This Act, therefore, in its leading provisions, is clearly constitutional,” . . . “with the exception of that part which confers authority upon State magistrates.” In that respect it is not constitutional.

The remaining question is, whether the power of legislation on this subject is exclusive in Congress, or concurrent in the States, until it is exercised by Congress. “By the general law of nations, no nation is bound to recognize the state of slavery as to foreign slaves found within its territorial dominions. If it does, it is as a matter of comity, and not as a matter of international right. The state of slavery is deemed to be a mere municipal regulation, founded upon and limited to the

range of the territorial laws." "If the Constitution had not contained this clause, every non-slaveholding State in the Union would have been at liberty to declare free all runaway slaves coming within its limits, and to have given them entire immunity and protection against the claims of their masters."

Before the adoption of the Constitution, therefore, no State had any power whatsoever over the subject, out of its territorial limits, except by comity or favor. The Constitution, in this clause, creates a new right, which the States never had, and, therefore, in the absence of all positive delegation of power to the States, it belongs to Congress and the national government which created it. How could a power intended to be the same throughout the Union, be confided to State sovereignty, which cannot rightfully act beyond its own territorial limits? The nature and object of this provision require that it should be uniformly regulated through the States, which can only be attained by giving to Congress exclusive jurisdiction; since, if each State were at liberty to prescribe such regulations as suited its policy, the legislation of one State might be utterly repugnant to and incompatible with that of another. The right, therefore, would never be practically the same in all the States, according to the guaranty in the Constitution. If, however, the right of legislation be construed as exclusive, all difficulties vanish.

Such is the reasoning upon which the judgment in the case of *Prigg v. The Commonwealth of Pennsylvania* is founded. In view of the importance of its doctrines, and the public interest it has excited, I have deemed it proper to set it forth thus at length. As its bearing,



as well as my father's views in respect to it, seemed to me to have been somewhat misapprehended, it should not be dismissed, in this place, without some explanatory remarks.

It is often assailed as if it had been decided on moral grounds. But, in fact, the question was purely legal, and not ethical. The function of the Supreme Court was to pronounce what the law was, and not what it ought to be; and their conclusions, whether right or wrong, are simply on the fact of the law. Arguments, which would have been unanswerable, had they been advanced against the adoption of the clause relating to fugitive slaves into the Constitution, cannot govern its interpretation after it has been adopted, and therefore cannot properly be urged against this judgment. The responsibility of laws rests with the legislature and the people whom it represents; the responsibility of their constitution with the people; neither with the judiciary.

Entertaining views so hostile to slavery in all its forms, my father would gladly have escaped from the decision of this case, and especially from being made the organ of the Court, in delivering its judgment. But urged to this position by the strenuous request of his brother Judges, he did not feel authorized to decline what he considered to be his duty, however unpleasant it might be. In so doing, he merely stated the *law* as he honestly believed it to be, under the Constitution and Act of Congress. But, supervised as the judgment was, and intended to express the views of the Court, he was not at liberty to introduce into it any expressions of merely personal feeling; and no one familiar with his

judgments, can fail to perceive in this a dryness, reserve, and unwillingness, peculiarly unnatural to him.

Regarded in a legal point of view, this judgment conforms to those principles of interpretation in favor of the Federal Government, which appear in his familiar letters, and are developed in all his other constitutional opinions. It affirms the doctrine, that the Constitution creates, not a mere confederation of States, but a government of the people, endowed with all powers appropriate or incidental to carry out its provisions, although not expressly surrendered by the States. Without contradicting previous judgments, it would have been difficult for him to come to a different conclusion. But, in establishing, contrary to the opinion of four of the Judges, that the extradition of fugitive slaves is exclusively within the jurisdiction of the Federal Government, and that the State Legislatures are prohibited from interfering even to *assist* in giving effect to the clause in the Constitution on this subject, he considered that a great point had been gained for liberty ; so great a point, indeed, that on his return from Washington, he repeatedly and earnestly spoke of it to his family and his intimate friends, as being “ a triumph of freedom.”

It was “ a triumph of freedom,” because it localized slavery, and made it a municipal institution of the States, not recognized by international law, and except, so far as the exact terms of the clause relating to fugitive slaves extended, not recognized by the Constitution. In taking these positions, it incidentally and for the first time in the national courts affirmed the doctrine before promulgated in the Supreme Court of Massachusetts, in *Commonwealth v. Aves*, (18 Pick. R. 193,) that the

authority of a master over his slaves does not extend to those whom he voluntarily takes with him into a free State where slavery is prohibited, but is strictly limited to the case of fugitives who have escaped without his will.

It was "a triumph of freedom," because it promised practically to nullify the Act of Congress,—it being generally supposed to be impracticable to reclaim fugitive slaves in the free States, except with the aid of State legislation, and State authority. This, in fact, was the very ground upon which Chief Justice Taney and Mr. Justice Daniel differed from the judgment of the Court. The former says, in dissenting from it,—

"According to the opinion just delivered, the State authorities are prohibited from interfering for the purpose of protecting the right of the master, and aiding him in the recovery of his property. I think the States are not prohibited; and that, on the contrary, it is enjoined upon them as a duty, to protect and support the owner, when he is endeavoring to obtain possession of his property, found within their respective territories." . . . "If the State authorities are absolved from all obligation to protect this right, and may stand by and see it violated, without an effort to defend it, the Act of Congress of 1793 scarcely deserves the name of a remedy."

. . . "It is only necessary to state the provisions of this law, in order to show how ineffectual and delusive is the remedy provided by Congress, if State authority is forbidden to come to its aid."

Mr. Justice Daniel, taking the same line of argument, also says, —

"Let it be declared, that the right of arrest and detention, with a view of restoration to the owner, belong solely to the Federal Government, exclusive of the individual right of the

owner to seize his property, and what are to be the consequences. In the first place, whenever the master, attempting to enforce his right of seizure, under the Constitution, shall meet with resistance, the inconsiderable number of Federal officers in a State, and their frequent remoteness from the theatre of action, must, in numerous instances, at once defeat his right of property, and deprive him also of personal protection and security."

Nor were these views contradicted by subsequent experience. From the day of the decision of *Prigg v. The Commonwealth of Pennsylvania*, the Act of 1793 was a dead letter in the free States. The operation of this judgment was seen, for example, in the case of the slave Latimer, which afterwards excited so much interest in Boston, and to the claimants of whom the Massachusetts authorities refused the use of their jails; and also in the subsequent Act passed by the Legislature of Massachusetts, by which it was rendered a penal offence for any State officer or constable to aid in any way in carrying this law into effect, or to confine any person claimed under it in the jails or prisons of the State. Such, indeed, was the difficulty of reclaiming a fugitive slave after this decision, that Congress, by the stringent Act of 1850 now in force, considered it necessary to revise the legislation on this subject.

Again, it was "a triumph of freedom," because, by giving exclusive jurisdiction to Congress, power was put in the hands of the whole people to remodel the law, and establish, through Congress, a legislation in favor of freedom; while, to permit a concurrent or exclusive jurisdiction to the States, would not only deprive all the free States of a voice in establishing a uniform rule through-

out the country, guarded by the strictest legal processes, but would enable each slave State to authorize recaption, within its own boundaries, under the most odious circumstances, without any legal process, if it chose, and upon the mere *primâ facie* evidence of slavery, growing out of color. By this decision, the question, as to fugitive slaves, was made a national one, and open for discussion on the floor of Congress. To the North was given a full voice on it.

Again, the best argument against the law was, in his opinion, a naked exposition of it. By claiming an exclusive jurisdiction for Congress, legislation on the subject was submitted to the people, and being made aware of the legal force of the existing law, it was for them to move in its amendment.

A much broader significance has been given to this decision than its circumstances warrant. The only question really before the Court, and passed upon, was whether the Act of Pennsylvania was unconstitutional; and it was held to be so, solely on the ground, that the power of legislation on the subject of fugitive slaves was exclusively vested in Congress. 'All the rest of the discussion is incidental to this one question. The constitutionality of the Act of 1793 was a collateral point, which was only examined so far as to answer the objection to its validity, on the ground that it was an exercise of legislative power by Congress over a subject within the exclusive jurisdiction of the States. All that the Court undertake to rule on this point is, that as legislation by Congress was not only constitutional but exclusive, the Act of 1793 could not be impugned on such a ground. No general argument upon the Act of 1793 was made or considered, the

question at issue being solely in respect to the Act of Pennsylvania; all general statements and arguments are, therefore, to be restricted to this view, and not to be taken as having a general bearing.

One prevailing opinion which has created great prejudice against this judgment, is, that it denies the right of a person claimed as a fugitive from service or labor to a trial by jury. This mistake arises from supposing the case to involve the general question as to the constitutionality of the Act of 1793. But in fact no such question was in the case; and the argument that the Act of 1793 was unconstitutional, because it did not provide for a trial by jury according to the requisitions of the sixth article in the amendments to the Constitution, having been suggested to my father on his return from Washington, he replied that this question was not argued by counsel nor considered by the Court, and that he should still consider it an open one.<sup>1</sup>

As incidental to this view, one passage in this judgment is important, in which my father directly states, that a claim for a fugitive from labor is "a case arising under the Constitution" of the United States, within the express delegation of *judicial power* given by that instrument. This clearly shows, that in my father's opinion, Congress cannot constitutionally prescribe proceedings for the delivery of fugitives from labor, except by requiring the exercise of a *judicial power*. It would seem, therefore, to follow directly from this judgment, that an act requiring only a "summary proceeding" before a magistrate would not be constitutional.

<sup>1</sup> See Story's Commentaries on the Constitution of the United States, 2d ed., § 1789.

Thus far I have felt it my duty to place my father's views in respect to this case in their true light. Whether his judgment be well founded in law or not, no one who knew him can doubt that he was influenced by none but the purest motives. He may have been mistaken in his construction of the Constitution and the Act of 1793. He may have been mistaken in supposing this decision to be "a triumph of freedom." But the earnest tone in which that exclamation is known to have fallen from his lips, reveals a confidence on his part that the effects of his judgment would be adverse to slavery.

In these remarks, I would by no means be understood to argue in favor of the Act of 1793, or of the clause in the Constitution, which has legalized slavery in our country, and proved the Pandora's box of nearly all our evils. This, however, is not the place to state my own views, except so far as to prevent incorrect inferences. My only wish has been, to set forth my father's position in this matter, fairly and without personal bias. I am unwilling that it should be inferred, from the decision in this case, that he could willingly, by any act of his, add to the sorrowful ban of that people, who, in a country boasting the largest freedom, are outlawed of their personal and political rights. I am unwilling, because such an inference is untrue. His whole life disproves it. The case of La Jeune Eugénie, and his repeated charges against the slave trade, publicly disprove it; and his private letters in respect to the Missouri compromise, and (as we shall see) to the admission of Texas, are earnest protests against slavery. I appeal to his own words as conclusive evidence of his feelings on this subject. "The existence of slavery," he says, in his charge on the slave

trade, "under any shape, is so repugnant to the natural rights of man and the dictates of justice, that it seems difficult to find for it any adequate justification." I appeal to every letter in this book in which the subject of slavery is alluded to, as proof that his judgment and feelings were steadily hostile to that institution; and although I am well aware that he was opposed to violent measures for its abolition, it was because he considered them as worse than ineffectual; as operating to retard emancipation, and as threatening destruction to the Union, with no benefit to the slave. Instead of bitterness and invective, he would have had conciliation and counsel on this subject between the North and the South, and believed, that had such a course been pursued, ere this the institution of slavery would have steadily waned, without danger to the Union.



## CHAPTER X.

### PROFESSORIAL AND JUDICIAL LIFE.

DEATH OF JUDGE HOPKINSON—LETTERS RELATING TO THE CRIMINAL CODE OF THE UNITED STATES—BANKRUPT ACT OF 1842—SECRET SERVICE RENDERED TO THE LEGISLATION OF THE COUNTRY—ENJOYMENT IN THE SUCCESS AND FAME OF OTHERS—LETTER ACKNOWLEDGING THE DEDICATION OF MR. GREENLEAF'S TREATISE ON EVIDENCE—INTEREST IN THE FOREIGN LAW—LETTERS ON THE REBELLION IN RHODE ISLAND—OPINION OF HAMILTON—FAVORITE POETS.

WHILE my father was absent at Washington in 1842, in attendance upon the Supreme Court, he received the news of the fatal illness of his friend Judge Hopkinson. To this he refers in the first of the following letters:—

TO MRS. SARAH W. STORY.

Washington, January 10th, 1842.

MY DEAR WIFE:

. . . You will be grieved to learn that Judge Hopkinson was seized with apoplexy and paralysis while reading in the Athenæum at Philadelphia on Friday last. There is not the slightest hope of his recovery, and he will probably survive but a day or two. He is seventy-two years of age, and it is not desirable, after such an attack, that he should live to be a burden to his family, without the consciousness or power of doing good. I confess that few events could

have occurred which would have come over me with a more profound gloom. He is one of the best of men; generous, liberal in his principles, and full of the right spirit in literature, and scholarship, and politics. I hardly expect again to meet another man whom I could so sincerely esteem as a tried and constant friend. Well may it be said, that "our dying friends come o'er us like a cloud, to damp our brainless ardor." . . .

Affectionately yours,

JOSEPH STORY.

TO MRS. SARAH W. STORY.

Washington, January 16th, 1842.

MY DEAR WIFE:

This day will complete the first week of my sojourn in Washington, and I am really glad to have the time pass away without seeming to linger. My health continues, (as I think) to improve slowly. All the Judges are present, and we have entered resolutely into the business of the Court; the docket is heavy, and the term must be laborious.

My lodgings are comfortable, and there is one circumstance connected with the family occupying the house, which in the hands of a poet might serve for the foundation of a pleasant picture. The family consist of an aged father, now blind, who was formerly a man of some property in Ohio, and his wife. His name is White. His daughter is now married to a Mr. Duncan, who is a respectable stonecutter, and she is, I believe, a milliner and dress-maker. There is a brother, also, who lives under the same roof, whose occupation I do not know. The father and mother are maintained by the children. He is very religious; belongs, I believe, to the Methodist persuasion, and every morning and evening he offers up prayers in the presence of the family, previous to which they sing a hymn, and generally also reads a portion of the Scriptures. Judge McLean, whose room is in the same

story with theirs, informs me that he constantly hears the fervent prayers of this aged man, and among other things he every day offers up prayers for us, the Judges, in the family. I hear their singing very distinctly when they "wale" their hymns. The old man seems cheerful and resigned, and the children contented and happy, contributing to his support with a ready and unpretending kindness. Yet they must be poor, and they let to us their best rooms, to eke out their means of maintenance. We may here see in humble life the excellent effects of piety and family kindness and right principles, under many privations. How much more affecting are such exhibitions than all the mawkish sentimentalism and imaginative pretensions of giddy enthusiasts in our day!

Truly and affectionately, with love to the children,

Yours,

JOSEPH STORY.

The important part taken by my father in the reform of the Criminal Law of the United States, has already appeared in the foregoing pages. The following letters, written during this year, avow his authorship of the Judiciary Act of 1818, and of a bill of seventy sections, drawn in 1825, twenty-five sections of which were passed, and are known as the "Crimes Act." Much as he had done, and often as he had been disappointed in his attempts to secure complete criminal jurisdiction to the United States Courts, his interest in the subject remained unabated. In consequence of the suggestions contained in the first of these letters to Mr. Berrien, a bill was drawn up by Judge Betts, of the District Court of New York, which was revised by my father, and partially passed by Congress. But the section extending the Common Law over all crimes against the United

States, committed within the admiralty and maritime jurisdiction, was thrown out.

TO HON. MR. BERRIEN, OF THE SENATE.

Washington, February 8th, 1842.

MY DEAR SIR:

I feel it my duty to lay before you, as chairman of the Judiciary Committee of the Senate, some considerations applicable to the present state of the Criminal Code of the United States. It is very grossly defective, and rarely does a single term of the Circuit Court occur, where a case is not presented which is wholly unprovided for by any law. The Act of 1790, ch. 36, was so defective as almost to amount to a dispensation from public criminal justice. The Crimes Act of 1825, ch. 276, was designed to cure some of the more important defects in the Act of 1790, ch. 36. That Act, *as I know*, contains only twenty-six sections out of a bill consisting of more than seventy sections, which was drawn from a careful revision of the Criminal Code of England and especially from the Criminal Law Consolidation Acts of Sir Robert Peel. The bill of seventy sections passed, I think, twice in the Senate, but was always passed over by the House of Representatives, from a supposed want of time to examine it. The Act of 1825, ch. 276, was then selected from the larger bill in the hope that from its being comparatively short, it might be passed, and it was passed, to cure some of the more important defects. These are the two principal Acts, although not the only ones, which now regulate the administration of criminal justice.

I know of but two ways by which the very great defects in our criminal Jurisprudence can be remedied. One is to authorize a general revisal and consolidation of all our criminal laws, not now entirely consistent with each other in their enactments. The other is, by some general provision extending the Common Law generally to all offences committed on

the high seas, and in the admiralty jurisdiction, as has been done by a recent statute in England, which would cure the most urgent defects. The latter is perfectly feasible, and may be done in a single section, and if any exceptions should be thought worthy of being made, as I scarcely think there would be, of a practical nature, they could be put in a proviso. The former could not be done well, except by some person or persons long and intimately acquainted with the administration of criminal justice in the Courts of the United States. If Congress were to request the Judges of the Supreme Court to prepare such a revision with supplementary provisions, to be laid before them at the next session, I cannot entertain a doubt that the Judges would appoint a sub-committee to prepare a draft for their approval and consideration. I can only say, that if no one else would undertake to prepare such a draft, I myself, although pressed by other judicial and professional engagements, would undertake to prepare it, — so conscious am I of the existing defects and of the necessity of a thorough reform in the whole code.

I respectfully submit this whole matter to your better consideration, and with a view to show what may be done by incorporating the Common Law into our code, I have drawn up, on a separate paper, a single section for that purpose.

I am, with the highest respect, truly your obliged friend and servant,

JOSEPH STORY.

The section drawn by my father is as follows : —

“Be it enacted, that if any Common Law crime, or offence shall be committed upon the high seas, or elsewhere, within the admiralty and maritime jurisdiction of the United States, the punishment whereof shall not be otherwise provided for by any Act of Congress, the same shall, upon the conviction of the offenders in any court of the United States of competent jurisdiction, be punished by fine not exceeding

one thousand dollars, or by imprisonment not exceeding one year, or by both, according to the nature and aggravation of the offence. Provided, however, that no assault or battery shall be punishable under this Act, unless it be of an aggravated or cruel nature, and arise from malice, hatred, or revenge, and without any justifiable cause.”<sup>1</sup>

TO HON. JOHN MCPHERSON BERRIEN.

Cambridge, April 29th, 1842.

DEAR SIR:

I should sometime since have returned you my thanks for your kindness in sending me your speech on the veto and the Senate bill, No. 142, (reported on the eighth of last March,) supplementary to the Judiciary act of 1789, if my time had not been so much occupied by the Bankruptcy Act as to take away all my leisure. I have read your speech on the Veto, as I did that on the Bankrupt law, with very great satisfaction and instruction. Both of them are masterly, and in every way worthy of the subject and of the Senate Chamber. They have that species of just eloquence which is more and more interesting to me every year of my life,—an earnest, persuasive cogency of argument, delivered in the style of a scholar, and with the enlarged views of a statesman. I hope you will excuse me for saying thus much, for I could not, consistently with my feelings, say less.

The Bankrupt Act works well. The Courts, at least in my Circuit, are working through all the difficulties incident to a new system. Many interesting questions have arisen in argument, and have been disposed of. I do not hesitate to say that the system is far less defective than the hasty examiner might suppose; and if Congress will let it alone for another year, and leave the Courts to adjust the machinery,

<sup>1</sup> The Act of 1835, ch. 513, (also drawn by my father,) punishes similar acts when committed under the like circumstances by masters and officers upon the crew, but that Act does not extend to the like offences committed by the seamen upon each other, or by officers upon passengers, or other persons not of the crew.

probe the defects, and dispel some of the supposed embarrassments which must in all new systems arise in giving them a practical operation, I am persuaded that the system will grow popular, and will be one of the most lasting benefits ever conferred upon our country. Whatever defects may exist, the Courts can in a year suggest them to the consideration of Congress for amendment. At present, I think we may say, we want no aid. The provision that the District Courts and Circuit Courts shall be always open in Bankruptcy, is of immense value, and enables the Judges, *velis levatis*, to dispose of almost all practical difficulties. . . .

I hope you will excuse me for the liberty I have taken in making these suggestions. They are dictated solely by the desire to further a due administration of public justice.

Believe me, with the highest respect,

Most truly your obliged friend and servant,

JOSEPH STORY.

TO HON. JOHN MCPHERSON BERRIEN.

Cambridge, July 23d, 1842.

MY DEAR SIR:

I ought to have thanked you before for your interesting letter; but my time is so much occupied by public duties that I cannot find much leisure to devote to friendly intercourse. So far as I am concerned, I am determined to give the Bankrupt Act a fair trial, and to demonstrate that it can be carried into effect with our present judicial machinery cheaply as well as promptly. And if it is permitted to live long enough to operate fairly upon future cases, my own judgment is, that it will be a great blessing to the community, and cut up by the roots false credits and extravagant speculations, by demolishing the means of obtaining indorsements *ad libitum*, for mere accommodation.

I regret that the Senate should have struck out the section of the Judicial Bill which gave cognizance of common law

crimes to the courts of the United States. I am surprised at the objections taken, and at the quarters from which they came. So grossly defective is now our positive statutable criminal code, that not more than one crime in three can now be punished by our courts. I despair of ever getting through Congress a criminal code adequate to our wants. Twenty years ago I drew up a Bill for the purpose; it was printed, and then it perished. Let me merely say, that among atrocious crimes unprovided for at all, are forgeries, and all other *crimina falsi*; rape and attempts to commit rape; poisoning, or attempting to poison, where death does not ensue; maliciously setting fire to ships or to goods on board of ships, whenever these offences are committed on the seas, &c. Cases of this sort have actually occurred and yet remain unpunishable. Considering the vast extent of our passenger ships, these crimes may be expected greatly to increase. I omit minor offences. But one object in the section was to give complete protection and relief to seamen, and to prevent the enormous abuses which are now practised by masters and officers upon them, and which are now wholly dispunishable. Some of the most disgusting cases, and even horrible ones, have occurred, and the parties have gone unpunished. The objection, that thereby the criminal cases would be greatly multiplied in our courts is more plausible than real. The truth is, that if punishable the offences would rarely occur. Impunity makes them common.

Never before did I feel the distressing mischief of the amendment of the Constitution as to the choice of President. The first and the second under the old clause were candidates deemed equally worthy and fit for the place.

I confess, too, that I begin to fear that the veto power must be altered by an amendment. If it continues to be acted upon as it has been of late, it will be impossible to maintain the original balances of the Constitution.

Believe me, with the highest respect, truly yours,

JOSEPH STORY.



These letters bear ample testimony to the generous zeal and readiness with which my father, going beyond the province of duties imposed upon him by his office, lent his powers to the preparation and establishment of laws. Several important Acts of Congress, among which was the Bankrupt Act, alluded to in the foregoing letter, were the product of his pen,—and others, not originally drafted by him, as in the case of the bill giving cognizance of common law crimes to the United States Courts, were submitted to him for revision and received from him essential improvements.

The number of statesmen who can give exact and legislative form to Congressional propositions is comparatively small. The ability to sketch a general outline of a principle is not, indeed, rare ; but to body that principle forth in exact laws, with their proper adjustments and limitations, and with all the qualifications and details necessary for practical operation, requires powers of no ordinary kind. My father always showed great readiness and facility in the exercise of legislative functions, and to him are due many valuable additions to our laws.

Few measures of importance affecting the permanent institutions of his country, relating to its commerce, manufactures, the administration of justice, or to its foreign relations, were debated in Congress during his judicial life, in which the aid of his learning and counsel was not freely sought and as freely given ; and the solid foundations of many a constitutional argument on the floor of Congress were laid in secret by him. His entire freedom from all envy and jealousy of spirit, his learning and liberality of view, and his generosity in giving, pointed him out specially as a fit oracle to be consulted,

and some of the most distinguished public men of the day availed themselves of his advice and assistance.

Much of this service, from its nature, as well as from the fact that it was often rendered orally, during personal interviews, must ever remain hidden. Almost without exception it has been publicly and generously acknowledged by those who partook of his bounty. It appears incidentally throughout his correspondence, and is directly shown in the comments on the judiciary bill of 1818 furnished to Mr. Pinkney, from which extracts have already been made.

His correspondence with Mr. Webster would clearly show that services most interesting in their nature and very considerable in extent, in relation to various important public questions, such as the Treaty of Washington negotiated between Mr. Webster and Lord Ashburton, the settlement of the North-eastern Boundary, and many other legislative, judicial, congressional, and official matters were constantly rendered by my father during much of his judicial life. But as I have been unable to obtain his most important letters to Mr. Webster, and as Mr. Webster, on my application, has refused assent to the publication of any of his own letters in my possession, no other course is left to me but simply to state the fact that such correspondence is in existence, and to offer as an excuse for its non-appearance, that I have vainly endeavored to procure it.

<sup>1</sup> Ἄνδρ'ι τοι χρεὼν

Μνήμην προσεῖναι, τερπνὸν εἴ τι που πάθοι.

Χάρις χάριν γάρ ἐστιν ἢ τίκτουσ' αἰεί.

"Οτου δ' ἀπορρεῖ μνήστις εὖ πεπονθότος,

Οὐκ ἂν γένοιτό ποθ' οὗτος εὐγενὴς ἀνὴρ.

<sup>1</sup> Sophocles — *Ajax*, l. 520 – 24; 1266 – 76.

Φεῦ· τοῦ θανόντος ὡς ταχεῖά τις βροτοῖς  
 Χάρις διαρρέει, καὶ προδοῦσ' ἀλίσκεται,  
 Εἰ σοῦ γ' ὅδ' ὦν' ἡρ οὐδ' ἐπὶ σμικρῶν λόγων,  
 Αἶας, ἔτ' ἴσχει μνηστῖν, οὐδ' σὺ πολλάκις  
 Τὴν σὴν προτείνων προῦκαμες ψυχὴν δορί·  
 Ἄλλ' οἶχεται δὴ πάντα ταῦτ' ἐρριμμένα.  
 ὦ πολλὰ λέξας ἄρτι κἀνόνητ' ἔπη,  
 Οὐ μνημονεύεις οὐκ ἔτ' οὐδὲν, ἥνίκα  
 Ἐρκέων ποθ' ὑμᾶς οὔτος ἐγκεκλεισμένους,  
 Ἥδη τὸ μῆδ' ἐντας ἐν τροπῇ δορός,  
 Ἐρρύσας' ἐλθὼν μῶνος.

The following generous and beautiful letter, written in acknowledgment of the dedication, by Professor Greenleaf, to him, of his very able treatise on Evidence, shows how thoroughly he rejoiced in the success of others, and the inexhaustible praise which he loved to pour out upon his friends. He had no jealousy of other men's advancement. He never sought to engross all praise. While he enjoyed his own fame, he was desirous that others should "pursue the triumph and partake the gale." Often have I heard him insist upon that noble theme, "that no man is in another's way;" declaring that men are but individual parts of one vast whole, each depending upon every other for his full development; that, by God's law, there was no collision between the various interests of men; while envy was only a Nessus-shirt, which afforded no protection from without, and consumed the vitals within.

TO PROFESSOR GREENLEAF.

Cambridge, January 6th, 1842.

MY DEAR SIR:

The accompaniment of your letter of last evening took me entirely by surprise. Instead of finding in it a continuation

of your manuscript on the Law of Evidence (which, in my simplicity, I supposed it would contain,) I found, unexpectedly to myself, that it contained but new evidence of your personal friendship and continued regard. I will not attempt to describe the emotions of deep sensibility and gratitude with which it overwhelmed me. They will not be forgotten by me to the latest hour of my life. Although I am thoroughly conscious, that I have no just title to much that you have said in commendation of my labors, and that your friendship has given to them a warm and glowing color, which imparts an attraction far beyond their intrinsic merits, yet I cannot find it in my heart to ask you to alter a single word, since it expresses your own sentiments and feelings, with a truth and sincerity far more gratifying to me than all the homage of public fame, so hardly won, so transitory, and yet so eagerly sought. I cherish such memorials as the best legacy I can leave to my children; and even when I am in my grave, I solace myself with the reflection, that they will feel that your praise was the best tribute I could desire, as it was founded upon that solid friendship and long intimacy, which grew indulgent as years glided by, and cherished, with the voice of kindness, every effort, on my part, to aid the science of law, and the growth of constitutional principles.

Our connection has been to me, indeed, a source of inexpressible pleasure and satisfaction. I recollect, with pride, that when Professor Ashmun died, my thoughts turned upon you as the man of all others best fitted to supply his place; and the corporation, with a unanimity and promptitude, which deserve the highest commendation, seconded the choice.

In one respect, I cannot permit your dedication to pass without a suggestion, which truth and justice demand from me. You and I have equally labored in the same good cause in the Law School, with equal zeal and equal success. We have shared the toils together, and if we have earned

a just title to public confidence and respect, you are every way entitled to an equal share with myself, nay, in some respects, to more. But for you, the School would never have attained its present rank. Your learning, your devotion to its interests, your untiring industry, your steadfast integrity of purpose and action,—have imparted to all our efforts a vigor and ability, without which, I am free to say, that I should have utterly despaired of success. Nay, more, but for your constant coöperation and encouragement in the common task, I should have drooped and lingered by the way side. But what I dwell on with peculiar delight, is the consciousness that we have never been rivals, but in working together have gone hand in hand throughout; that not a cloud has ever passed over our mutual intercourse, and that we have lived as brothers should live; and, I trust in God, we shall die such.

You know it has long been my intention to dedicate one of my works to you, as a public testimony of these my feelings and opinions. I have always intended to reserve that for my crowning and last juridical labor. Under such circumstances, I have said to myself, the maxim will be felt to have the best personal application,—*finis coronat opus*. But I am admonished, that age and infirmity are beginning to press upon me, and lest I should not live to complete my labors, if another year of life and health is spared to me, I shall dedicate my next work to you, in which I shall speak to the public, at large, my opinions of your talents and virtues and eminent services in the Law School.

In the mean time, I pray you to preserve this letter as a reminiscence of the past, as well as a grateful acknowledgment of the pleasure with which I subscribe myself, with the highest respect,

Most truly and affectionately,

Your faithful friend,

JOSEPH STORY.

TO HON. JAMES KENT, LL. D.

Cambridge, August 7th, 1843.

MY DEAR SIR:

I do not know when I have received so much pleasure as in reading in the New York American, of Friday last, the invitation to you to a public dinner, on your reaching your eightieth year. It is a noble tribute, well merited, and well paid. I unite, with my whole heart, in every word said by the committee in their letter; and your reply is every thing I could have desired, so simple and chaste, so just and affecting. Your reference to domestic life, and the cultivation of domestic affections, to the virtues of private life, as well as the pure virtues which should mark public life and professional conduct, have for me an inexpressible charm. I felt, every moment, as I read, "Here is at once the teacher and the example, speaking at the same moment." Consider, for a moment, what a proud example your life is to all professional and public men! You have, through good report and evil report, in prosperity and in adversity, in the triumphs and the humiliations of party, been consistent and true to all your principles. Public office has never seduced you from the path of honor; you have stood amid the defections of many other proud names, fixed and immovable in the right; never abandoning friends for the trappings of office, nor turning away from principles, when they no longer had the shouts of the multitude, — the clamorous voice of the people, as capricious in its hosannas, as it is unprincipled in its denunciations. And what is the result? Just what it should be. Just what, in God's good Providence, it must always, first or last, be; that you reap the reward of honesty, of firmness, of patriotism, and of unshrinking devotion to the law.

But I must stop, and ought not, perhaps, to have said so much, that looks so personal. But my heart is full of you;

and I could not let the day pass, without giving vent to my feelings.

May God bless you and your family, and give you yet many years of health and happiness.

I am, with the highest respect,  
Most truly, your obliged friend,

JOSEPH STORY.

The following verses were written at this time on hearing an argument in court.

LINES WRITTEN ON HEARING AN ARGUMENT IN COURT.

Spare me quotations, which, though learn'd, are long,  
On points remote at best, and rarely strong;  
How sad to find our time consumed by speech,  
Feeble in logic, feebler still in reach,  
Yet urged in words of high and bold pretence,  
As if the sound made up the lack of sense.  
O ! could but lawyers know the great relief,  
When reasoning comes, close, pointed, clear, and brief.  
When every sentence tells, and, as it falls  
With ponderous weight, renew'd attention calls, —  
Grave and more grave each topic, and its force  
Exhausted not till ends the destined course, —  
Sure is the victory, if the cause be right;  
If not, enough the glory of the fight.

The interest my father took in the study of the Foreign Law, and his desire to forward the study of it in this country, appears in the following letter to Mr. Schmidt, the editor of the Louisiana Law Journal.

TO GUSTAVUS SCHMIDT, ESQ.

Washington, February 3d, 1842.

MY DEAR SIR:

I had the pleasure, a day or two since, of receiving your letter of the 18th of January, and have little more time from

my pressing judicial labors than to thank you for it. I have contrived to snatch time, however, from sleep, in order to read the sheets of your Review of the Code Napoleon in the English translation. It has greatly pleased me, and in the rapid sketch given of the rise and progress of the French law, has brought together much learning, which will at once instruct and gratify the curious among our common lawyers. I trust and believe that your Journal will make its way to the public favor, if slowly, yet firmly in the old States of the Union. We really are sadly ignorant of the vast resources of the Roman, the French, and the other foreign laws, which may be brought in aid of our common law studies.

What you say respecting Pothier, I have been long inclined to believe. He owes much to his predecessors, which is acknowledged. But still he has great merits of his own; and his treatises are the most finished and comprehensive that we had down to his day. Have they in reality been since excelled? I am aware, that to make a translation of many of Pothier's Treatises, useful in the highest degree at the present time, large commentaries would be necessary to state the changes of the law, and, I will add, its improvements. I fear, however, that we can hardly hope in our day to find any jurist sufficiently qualified, who at the same time could command the necessary leisure, and would be willing to devote it to such a task; for such a man might far more, for his own reputation, employ himself in an original work. It is in this view that I have ventured to suggest a mere dry translation of some of Pothier's most useful treatises, as not requiring any great effort or leisure; and yet such a translation would be a high ornament of any library, and enable us to know better than we now do, the state of the law in the past age. Thus, for example, a translation of Pothier on Insurance, and on Exchange, would be, in a practical sense, a great addition to our present means of information upon these important topics; and there are others again that would



enlighten us as illustrations and analogies in new cases in the common law.

Believe me, with the highest respect,

Truly your obliged friend and servant,

JOSEPH STORY.

The political disturbances, which occurred at this time in Rhode Island, and are alluded to in the following letters, were briefly these : A large party, opposed to the property qualification of voters required by the old charter of Charles II., which was still in force, and claiming a free suffrage of all the people in their elections, called a convention, at which, in defiance of the laws, a new constitution was adopted, under the provisions of which Thomas Dorr was elected Governor. To enforce this self-constituted government, arms were taken up against the State, and affairs wore so threatening an aspect, that a requisition was made on the President to protect the established authorities against "domestic violence." No such assistance, however, was ultimately necessary, the insurrection being promptly and satisfactorily put down by the State. But it was rather the mode in which the free-suffrage party attempted to enforce their views, than the views themselves, which roused the opposition of the people ; and it was generally considered advisable that a change in the old charter should be made, so as to extend the right of voting. Under these circumstances a new constitution was proposed to the legislature, altering the charter in this respect ; and, though strongly opposed at first by the friends of the old system, was finally adopted. The pamphlet of Judge Pitman, spoken of in these letters, advocated the views of the law and order party.

TO HON. JUDGE PITMAN.

Washington, February 10, 1842.

MY DEAR SIR :

I had the pleasure of receiving your letter by Mr. Greene. Owing to my being confined to my bed by severe indisposition for several days, I did not see him, nor receive your pamphlets until a week after his arrival. I read over your pamphlet carefully, and think it perfectly sound and just in its appeals to the good sense of the people of Rhode Island. If ever there was a case that called upon a judge to write and speak openly and publicly, it was the very case then before you. The Constitution of Rhode Island was to be overturned by a self-created body, and I know no duty more sacred in every citizen than upon such an emergency to come forth and resist, by all the just and moral means in his power, such proceedings. I do not well see how your reasoning is to be met or censured. Mr. Goddard's article, too, is excellent, and written in the right spirit. I trust that those who have been found "faithful among the faithless," will yet succeed in saving your State from having all its best institutions shaken, if not destroyed, by the free-suffrage party. What is a Republican government worth if an unauthorized body may thus make, promulgate, and compel obedience to a Constitution at its own mere will and pleasure?

The Bankrupt Act has had a breathing-spell left for it. How long it will be suffered to live I cannot tell. But if Congress will leave the Courts to carry it into effect, I firmly believe that it will become a most useful and salutary law. I, at least, will do all I can to give it a fair operation, and a cheap one. . . .

I have stolen a few hasty moments to write you, and can now only add, with my kindest regards to all the family, that,

I am most truly and affectionately yours,

JOSEPH STORY.

TO HON. JUDGE PITMAN.

Cambridge, April 1st, 1842.

MY DEAR SIR :

I have the pleasure to acknowledge your letter of the 30th ult. In respect to the case of the alien soldier, asking for a writ of *habeas corpus* to discharge him from the service on account of alienage, I can only say that no such case has ever come before me since my appointment on the Bench. I have not had time to examine the laws respecting the army critically, but I presume you have. Unless some positive, clear, and unequivocal clause exists prohibiting such enlistment, there is certainly no ground for discharging the party as an alien. I have looked into the eleventh section of the Act of 1802, and no prohibition there exists. It merely gives a bounty for the enlistment of citizens as a premium, and that may well be as a matter of policy to encourage the enlistment of citizens, without prohibiting that of foreigners. The military establishments of most nations do, I believe, either directly or indirectly, allow the enlistment of foreigners, and it is notorious that during our late war with England, many were in our service, even English subjects; nor do I know that it was ever doubted that foreigners might be enlisted into our service. I dare say at the present time many hundreds of them are in our service. The taking the oath of allegiance to the United States does not prevent such enlistment, for it merely subjects him to a double allegiance, if our country and his should actually be at war, but no conflict can arise if he be a foreigner of a nation with which we are at peace. On the whole, then, unless some positive prohibition exists, I do not see how the Courts of the United States can pronounce the enlistment unlawful. Beside, I entertain great doubts whether any man who is of full age, and has voluntarily enlisted, without stating his alienage, ought to be admitted, after receiving the pay of the government, to set up his own act, *in fraude legis*, as a ground of his discharge. If

he chose to enlist, he took the consequences; and I have difficulty now in saying that he can avoid his contract by showing that he ought not to have been enlisted.

You refer to the case of a discharge recently directed by a Virginia magistrate, of an alien under a *habeas corpus*, upon this very ground. Upon a question growing out of the Constitution and laws of the United States, the decision of a State magistrate is not, and ought not to be of any great authority; and that of a State magistrate of Virginia may well be supposed to be less authoritative upon such a subject, from their known habits and doctrines of construction of the Constitution and laws of the United States. Cases of this sort belong peculiarly to the Judges of the United States, and ought, as I think, to be exclusively cognizable by them.

I confess that I was not prepared for the late events in Rhode Island. I supposed it in the highest degree probable that the new Constitution would have been adopted by the people, although I thought it possible it might not. It appears to me that the great mistake was to leave every thing to take care of itself until the last hour. Your Legislature, a year ago, ought to have passed laws, making it a crime for any self-created convention to frame a Constitution for the State; and thus to have stopped the affair in the bud. As it is, I think the friends of the old charter have acted excessively unwisely, not to say excessively wrong, by not voting for the new Constitution,—not as the best in itself, but as the most practicable security under existing circumstances. They ought to have foreseen that under the divided state of public opinion, anarchy, or the other Constitution might triumph. Unless they are prepared to go the full length of now resisting by force the free suffrage Constitution, and the Legislature will pass laws to enforce the rights of the old government, and to punish those who shall attempt to organize a new government, it seems almost madness to hope for any security, and the folly of voting against the new Constitution was and is enormous. Every thing, therefore, rests with your Legisla-

ture. They must go resolutely, boldly, and bravely to work. If they hesitate, they are lost, and the charter is gone. The Legislature have a right to call upon the President to protect the government against "domestic violence," under the Constitution of the United States, and the President may then issue his proclamation. But, unless the Legislature ask it, or the Executive, when the Legislature is not in session, I know of no authority in the President to do any thing. Why may not your Legislature again submit the Constitution to the people, upon the ground of the smallness of the majority against it, and with a view to reëxamine its merits under this new and most portentous aspect of things?

I could say much more, but I do not know whether the questions may not yet come before us in some shape judicially, and therefore forbear.

Believe me, most truly and affectionately, your friend,

JOSEPH STORY.

To Hon. Ezekiel Bacon, my father thus writes, with all the warmth of a friendship which looked back to early days:—

TO HON. EZEKIEL BACON.

Cambridge, April 30th, 1842.

MY DEAR SIR:

. . . We are growing old together, and although my active pursuits, crowded as my life is with public and private cares, leaves me but little time to indulge in the vein of thoughts and feelings which your poetry so beautifully indicates, yet you would do me injustice if you supposed that my heart rested on earthly ambition or earthly objects. I have lived too long not to know, and to know deeply, the truth of that Scripture preacher, "Vanity of vanities, all is vanity," although, certainly, all is not "vexation of spirit." In truth, I can no longer sigh after wealth, or office, or public

honors; not, indeed, that I am indifferent to them, but I understand their true value. I know that I am approaching the end of human life and human excitement; and my thoughts turn with great frequency and earnest hope to another world, where I trust that you and I may meet, through the mercy of God, with an immortality of happiness.

I entirely concur with you in your estimate of Mr. Madison — his private virtues, his extraordinary talents, his comprehensive and statesman-like views. To him and Hamilton I think we are mainly indebted for the Constitution of the United States, and in wisdom I have long been accustomed to place him before Jefferson. You and I know something more of each of them in trying times, than the common politicians of our day can possibly arrive at. I wish some one who was perfectly fitted for the task, would write a full and accurate biography of Madison. I fear that it can hardly be done now; for the men who best appreciated his excellences have nearly all passed away. What shadows we are!

Give my kind regards to your family, and believe me, most truly and affectionately your friend,

JOSEPH STORY.

TO HON. EZEKIEL BACON.

Cambridge, July 30th, 1842.

MY DEAR SIR:

Few things could have been more gratifying to me than to receive your kind letter a few days ago, and yesterday the volume of your poems, which you have, with so much affectionate kindness, dedicated to me. It is a source of great pride and pleasure to me, not merely from its expressions of respect for my public character, (which I am aware is easily over-estimated) but from its being from an old friend, with whom I have lived so many years, more than half the life of man, with such an entire confidence in his character, talents,

and virtues, uninterrupted, notwithstanding the distances of time and place, by the slightest coolness or reserve. To me, such a tribute, under such circumstances, would be doubly dear; and from you in particular it has a value as great as any human being could confer on me. I have lived long enough to know too many of the mutations of private and public friendships, and the changes of men and things, not to be sensible what a rare comfort it is to approach the close of life, and feel, from the bottom of my heart, that I retain the early friendships which I formed, not merely with the same feelings with which they began, but with the consciousness that they have now acquired a solid growth which seems almost beyond the reach of accident. . . .

It may seem somewhat strange, to careless observers, that one whose spirits are so buoyant as mine naturally are, and whose labors so incessant, should yet far more relish melancholy poetry than any other, and read more of it. Young was a favorite of my youth, Cowper ever has been by his side, and Crabbe continues to be to me a severe but true teacher of life and manners and morals. . . .

Most affectionately your friend,

JOSEPH STORY.

The volume of poems, alluded to in the foregoing letter, was entitled "Recreations of a Sick Room," and is in a very melancholy vein. In a subsequent letter to Mr. Bacon, dated July 6th, 1844, my father says, —

"I begin to suspect that both of us belong to the old school of poetry, which the young men now treat as a mere piece of antiquity, historically well enough, but by-gone. It may be so, but I still cling to Dryden and Pope and Gray and Goldsmith and Johnson, as my standards."

My father's favorite poets were Gray and Pope. The nice wit, the terse epigrammatic point, the polished com-

pliment of Pope, and the elaborated diction and classic spirit of Gray, had for him greater charms than the musical elegance of Spenser, or the naïve and vigorous nature of Chaucer. He delighted in the simplicity and quiet flow of Goldsmith and Cowper, and Crabbe's stern pictures were to his taste. Of more modern poets, Burns and Byron were his favorites. Wordsworth he thought too tame, Shelley too visionary; Coleridge, and some poems of Tennyson he admired. I think, however, his favorite poem of all in the English language was Gray's *Elegy in a Country Churchyard*. Another poem, which he used frequently to repeat with pleasure, was Mason's *Elegy on Lady Coventry*, the first part of which he admired. Of the most modern poets he read little and liked little,—his affections were with those whom he had read in his youth, with what he called the purer and simpler class of poets. The didactic school had, as was natural, the greatest charm for him, but he also delighted in the nervous old English ballads. Poetry he loved to read, and to write to the last. He found in it a solace for gloom, a relaxation from toil, an unobtrusive and ever-ready friend. Virgil was his favorite of the Latin poets, and he never travelled without a little pocket-edition, which is marked all over by him.

In his *Autobiographical Letter to me*, he says, on this subject,—

“ Though no longer a votary, I delight to visit the haunts of poetry, to listen to the lofty strains of the great masters of the lyre, to gaze on the magnificent structures reared by her worshippers, and to catch a transient inspiration, while roving abroad through nature.



I feel the gales, that round me blow,  
A momentary bliss bestow,  
As waving wide their gladsome wing,  
My weary soul they seem to soothe,  
And redolent of joy and youth,  
To breathe a second spring.

“But, to drop metaphor, I still continue to relish poetry and fiction with a warm and vigorous love, not, indeed, in the daily outpourings of modern poets, but in the works of the great classics of our language, of Milton, and Shakspeare, and Dryden, and Pope, and Thomson, and Gray, and Goldsmith, and others of that true school of immortal verse. Of the more modern poets my principal favorites are Cowper and Crabbe, the former for his singular beauty and simplicity of thought and language, and severe truth of morals, the latter for his almost supernatural illustrations of the human character in all its nicest shades and most secret workings.”

## CHAPTER XI.

### PROFESSORIAL AND JUDICIAL LIFE.

FORMATION OF A SOCIETY OF THE ALUMNI OF HARVARD UNIVERSITY — ORATION BY MY FATHER — EXTRACT — BANKRUPT ACT COMES INTO OPERATION — JUDGMENT ON IT — “EX PARTE FOSTER” — LETTERS FROM MR. JUSTICE COLERIDGE AND LORD CAMPBELL — ILL HEALTH — LETTER ON THE CASES OF *LA JEUNE EUGÉNIE* AND *PRIGG v. THE COMMONWEALTH OF PENNSYLVANIA* — RIGHT OF INSTRUCTION — PUBLICATION OF COMMENTARIES ON BILLS OF EXCHANGE — PREFACE — OPINIONS OF FOREIGN JOURNALS — LETTERS FROM MR. JUSTICE PATTESON AND MR. JUSTICE COLERIDGE — DEDICATION — PROJECTS A VISIT TO ENGLAND — CORRESPONDENCE RELATING TO IT WITH MR. EVERETT — LETTER RELATING TO LADY HEWLEY’S CHARITY — DEATH OF HON. MR. LEGARÉ — TRIBUTE TO HIM BY MY FATHER — LETTER RELATING TO IT.

A SUBJECT which greatly interested my father at this time, was a scheme for the formation of a society embracing all the Alumni of Harvard University, which should have an annual meeting on commencement week. Hitherto the societies of the University had been more or less exclusive in their character, and my father’s generous nature had often been pained to see well-grounded claims to fellowship rejected from motives of personal pique or dislike. In establishing an association, to which the sole qualification of membership should be graduation from the University, or study within its walls, he hoped to create an academic brotherhood, uninfluenced by personal rivalries and jealousies, which returning annually

to the scenes of student life, should there renew the friendships of the past, revivify the memories of visionary hopes and fancies, and join in festal feelings, each with his yearly lessening company, that disbanded on the threshold of manhood. At my father's instance, and principally through his personal efforts, such a society of the alumni was formed. In compliance with his wishes, Hon. John Quincy Adams was made its President, and he himself accepted the place of Vice-President. Upon the declination of Mr. Adams to prepare the opening discourse, my father, though greatly pressed by his various duties, consented to perform this office; and accordingly on the twenty-third of August, 1842, he delivered the first oration before the society. It is conservative in its spirit, and is devoted to a consideration of the literary tendencies and demands of the age. A paragraph, near the beginning, shows his views of the objects of this association.

“ We are assembled here, for the first time, on an occasion equally worthy of commemoration, and full of responsible duties. We meet to celebrate the first anniversary of the society of all the Alumni of Harvard. We meet without any distinction of sect or party, of rank or profession, in church or in state, in literature or in science. We meet, as a band of brothers, educated in the bosom of the same indulgent parent, and drinking from the same fountain, which has from the beginning poured forth its pure and sparkling streams of knowledge to give life and glory to our land. Our fellowship is designed to be — as it should be — of the most liberal and comprehensive character, conceived in the spirit of catholic benevolence, asking no creed but the love of letters, seeking no end but the encouragement of learning, and imposing no conditions which may lead to jealousy or ambi-

tious strife. In short, we meet for peace and for union; to devote one day in the year to academical intercourse and the amenities of scholars. We would shake off from our feet the dust, gathered, not only in the by-ways and highways of life, but in the fervid race for public distinction. We would lay aside for the hour, the garlands and the palms, and the emblems of victory. *Viridesque Coronæ et Palmæ pretium victoribus.*"

The following letter, among other things, alludes to this discourse as being in press, and is interesting as showing his modest estimate of his own powers, and his cheerfulness of nature.

TO HON. EZEKIEL BACON.

Cambridge, September 12th, 1842.

MY DEAR SIR :

. . . My discourse before the Alumni Society will be published in a few days, and I shall take pleasure in sending you a copy. I think that you will find most, if not all my views are conservative, and coincident with yours. Indeed, I thought it unbecoming my age and position, to descend to flattery of our country, and determined to speak out the truth, at least as I thought it.

You have kindly alluded to my success in life, and I can assure you, from the bottom of my heart, what deep gratitude I feel to a good Providence for so many blessings truly unexpected by me, and which so many men whom I love and honor have not been so fortunate as to obtain. I am conscious that much has been the result of accident, (in our human sense of the word) of lucky chances, and unexpected and unsought advantages, far, very far, beyond what I feel to be my deserts; and far, very far, from any thing that I ever imagined or hoped to obtain. I have indeed had my sorrows, but they have been more than counterbalanced by my

varied blessings. All I pray for is, that it may teach me the best blessing of life, to learn sympathy for the distresses of others, and to lend my encouragement, however feeble, to aid the young, the enterprising, and the good. . . .

Yours, most truly and affectionately,

JOSEPH STORY.

During this year, the Bankrupt Act of 1841 came into operation, and threw a great additional labor on the Circuit Court. The system of bankruptcy was entirely new; the questions arising under it were not well understood; and the act required illustration and definition by judicial opinions. To its exposition my father devoted himself with great zeal, and wrote out a large number of elaborate judgments. Among these, may be mentioned the exhaustive judgment in "*Ex parte Foster*," (2 Story, R.) on the meaning of the clause in the Bankrupt Act saving all liens, in which he went into a very full investigation of the nature of equitable, common law, and maritime liens, and decided, that an attachment on mesne process did not constitute a lien in the strict sense of that term. This labor was wholly additional to the ordinary business of the Court, and as the docket was crowded with cases under the bankrupt law, his utmost energy was required to dispose of them.

The following complimentary letters from Mr. Justice Coleridge and Lord Campbell, are selected from those received during this year, relating to my father's Commentaries:—

TO HON. JOSEPH STORY.

London, February 10th, 1842.

MY DEAR SIR:

I can now speak, from some knowledge, of all four of your volumes. The Conflict of Laws I have read through, and the other three, particularly the Law of Agency, I have had occasion to use very often, and I can sincerely, if I may without something like presumption, say every thing in their favor; but I may express to you what is more valuable than my own opinion, that I believe all English lawyers are of the same judgment. It is impossible, I think, for an English lawyer to read any one of your books, without feeling, that the position of an American lawyer is, in many respects, more favorable for an extended and scientific knowledge of law, than that of an English lawyer. The simple circumstance, that your Constitution forces international law on you, as an integral part of your studies, and *that*, by something almost a necessity, the study of the Roman law,—is, in my opinion, an advantage far beyond that of our superior accuracy (if we have it) in our own common law, acquired by the comparatively narrow range of our studies. This is especially so with a Judge; for, after all, the important thing is, how we use our knowledge, and this extended, liberal, and scientific study must liberalize and enlarge the powers with which we use our knowledge of details.

Your faithful and much obliged servant,

J. T. COLERIDGE.

TO PROFESSOR STORY.

London, September 21st, 1842.

MY DEAR SIR:

On my return from the Continent, where I have been since the prorogation of Parliament, I find the copy of your

Miscellaneous Writings, which you have done me the favor to present to me. I beg you to accept my warmest acknowledgments for this mark of your esteem. My library is now enriched with the whole of your published works. I survey, with increased astonishment, your extensive, minute, exact, and familiar knowledge of English legal writers in every department of the law. A similar testimony to your juridical learning, I make no doubt, would be offered by the lawyers of France and Germany, as well as of America, and we should all concur in placing you at the head of the jurists of the present age.

I should particularly thank you for your treatise on Equity. When appointed Chancellor of Ireland, I sedulously devoted myself to it, and guided by it, I trust I should have been able satisfactorily to discharge the duties of my office, if political events had not suddenly reduced me to a private station. I may mention, as a curious anecdote, that when I went over to Dublin, I omitted, in the first instance, to obtain the Queen's sign manual, authorizing me to act in lunacy, and on this point, so peculiarly English, I found much more information in your book, than in any English publication.

With the highest respect,

I remain, yours, most faithfully,

CAMPBELL.

Meantime the Law School grew very rapidly, and the number of students had increased to one hundred and twenty. With this growth the labor of my father in some degree corresponded. Very little leisure was now at his disposal, and whatever he could command he bestowed upon the composition of a work on Bills of Exchange. But when he had nearly finished it, his health broke down under the accumulation of labors, and he was seriously ill in November. From this attack

he recovered very slowly, and in consequence of his ill health he was persuaded, greatly against his own inclination, to absent himself from Washington and to avoid all judicial duties during the winter. Against the advice of his physicians and friends, he kept his trunk packed for about ten days, hoping to gain sufficient strength to enable him to go to Washington, so unwilling was he to avoid the labors of his office; but just as he was on the eve of departure, a relapse warned him that it would be dangerous to proceed, and he finally consented to remain at home. This was the only session of the Supreme Court which he did not attend from the time of his appointment, in 1812, to his death, a period of thirty-three years.

His ill health also forced him, during this winter, partially to intermit his exercises at the Law School, and Charles Sumner, Esq., assumed, for the time, his duties, performing them with great ability and success.

The following letters, written during the latter part of this year and the beginning of the next, give an account of his health and allude to the question of Slavery.

TO HON. EZEKIEL BACON.

Cambridge, November 19, 1842.

MY DEAR SIR:

I should long since have thanked you for your late letters, and their pleasant and interesting accompaniments, if I had not been seriously indisposed. In truth, I have been so much and so constantly overworked for a long time that my health entirely sunk under my efforts, and I was constantly on the brink of a typhus fever without knowing it, and was obliged to send for my physician, who ordered total abstinence from



all labor; and under his direction and medicines I am now, after three weeks' confinement, going about again, but am still feeble. . . .

I regret that I did not see Mr. Kirkland when he called at my house, being then engaged in a lecture at the Law School almost for the first time for a month.

The case decided by me, touching the slave trade being piracy, was *La Jeune Eugénie*, reported in 2 Mason's R. 409, in 1822. I there held, that abstractly considered, the African slave trade was contrary to the Law of Nations, and that unless the municipal law of France authorized it, the owner of a French ship could not, in American courts, vindicate any title to the ownership of such ship, if engaged in the slave trade. My decision was overruled in the Supreme Court in the case of the *Antelope*, but I always thought that I was right, and continue to think so. The case of the *Eugénie* was printed at the time in a pamphlet. I have mislaid my copy of it, and if I ever can find one among all my friends or in any bookstore, I will send you one. However, I shall never hesitate to do my duty as a Judge, under the Constitution and laws of the United States, be the consequences what they may. That Constitution I have sworn to support, and I cannot forget or repudiate my solemn obligations at pleasure. You know full well that I have ever been opposed to slavery. But I take my standard of duty *as a Judge* from the Constitution. . . .

Pray do not for a moment imagine that I am not attentive to all your kind communications, because I do not answer them; for I have so little leisure that I can scarcely find time to answer letters of urgent business.

Believe me, most truly and affectionately yours,

JOSEPH STORY.

TO HON. MR. JUSTICE McLEAN.

Cambridge, February 9th, 1843.

MY DEAR SIR:

. . . My health continues to grow better, although from my debility the progress is very slow and tedious. My physician encourages me to believe that I shall ultimately be restored to as good a state of health as I have been in for many years past; but that abstinence from mental labor is a *sine quâ non*; so that I begin greatly to doubt whether I ought to join the Court the present term; unless, indeed, I shall be thoroughly well within a short time, the experiment will be worse than useless.

It has occurred to me several times to ask you to give me, for the use of the Law School, your copies of the printed Reports of this term; it will be a great aid and assistance to the students; and please to make an entry on each, whether judgment was affirmed or reversed.

I would write more but I feel already fatigued by my present effort. Pray give my kindest regards to Dr. Sewall and Mrs. Brown, and assure Dr. S. that I feel deeply indebted for his interest in my health and his invitation to accompany him to England. If my health should not be completely restored in the spring, I am not sure that I shall not be tempted to take passage with him in the steamer.

Believe me, most truly and affectionately,

Your friend,

JOSEPH STORY.

TO HON. JOHN M. BERRIEN.

Cambridge, February 14th, 1843.

MY DEAR SIR:

I should long since have thanked you for the copy of your address to the people of Georgia, if I had not been prevented by my protracted ill health, and the hope that I might per-

sonally present my thanks to you. I am now in some measure restored to health, but not so far as to enable me to resume my business. But I am unwilling any longer to appear to have been wanting in a suitable acknowledgment for your kindness. I read your address with unfeigned satisfaction. It was in every respect worthy of yourself and of your principles, and I heartily concur in your powerful, and, in my judgment, conclusive reasoning on all the topics which you have discussed. My only regret is that the address is not put into a pamphlet form, so as to be capable of a more enduring mode of preservation. Your argument upon what is called the "Right of Instruction," is exceedingly cogent, and, as I think, unanswerable. If ever my book on the Constitution shall reach another edition, I mean to extract the passage and use it in that work. I have laid aside the newspaper for this purpose, among my choice collections.

There are several topics, upon which I wished to make some suggestions to you, such as the Bankrupt Act, but I have not as yet strength enough to spare to venture on them.

Believe me, with the highest respect, most truly your obliged friend,

JOSEPH STORY.

TO J. J. WILKINSON, ESQ.

Cambridge, May 13th, 1843.

MY DEAR SIR:

I owe you an apology for not having before answered your kind and interesting letter of the 10th of November last. It reached me in due season, but at a period when I was suffering under a severe illness, from which I recovered after some time; but I was imprudent enough to engage again in my professional and judicial duties too early, and thereby encountered a relapse, from which I am hardly yet entirely well. I had no specific disease, except great debility arising from overworking. I was reduced to the brink of a

typhus fever, from which I had a very narrow escape, and which might have been fatal to me. I am still under the care of a physician, and abstain from all judicial duties. I shall not resume them until the autumn, when I have every reason to believe that I shall be in sound health. . . .

In respect to Mr. Tidd, I am proud to say, that I possess a copy of all his works in the latest editions; the old Practice, and the Supplements, and the new Practice. For more than forty years his works have been my study, and it affords me the sincerest pleasure to know that he still lives to enjoy his well-earned fame, which I am persuaded will descend to future generations. Under these circumstances, I have no right to avail myself of his offer, though most kind, to present me a copy of the latest edition of his works. And yet I must confess that a donation of them, with his autograph in the fly page, would be more gratifying to me as a lover of the law and its venerable dignitary, than any other present which could be offered to me of the most costly form. I delight to dwell on the recollections of the instructors of my youth; and to no one more than Mr. Tidd, do I owe great obligations.

Believe me, with the highest respect, truly your most obliged friend,

JOSEPH STORY.

Meanwhile, whatever time my father could devote to labor was spent on his Commentaries on Bills of Exchange, which was printed early in the year 1843, and constituted another most valuable donation to the profession. In the treatment of this work, he adopted a new plan of writing a distinct treatise on Bills of Exchange, instead of confusing it with the doctrines applicable to Promissory Notes, as had previously been done in the principal works on this subject. The reasons which induced him to adopt this plan he thus states in his preface:—

“ In presenting the present work to the indulgent consideration of the public, a few explanatory remarks may seem necessary, inasmuch as the plan essentially differs from that adopted by all the English elementary writers upon the same subject. The subject of Bills of Exchange is here treated entirely distinct from that of Promissory Notes and other Negotiable Securities of a kindred nature. I am aware, that many of the principles of the latter are strictly applicable to the former; and that, therefore, it may, at first view, be thought a superfluous labor, as well as an unnecessary repetition, to discuss them at large in separate volumes. In truth, my attention was first attracted to the great practical inconvenience of uniting and intermixing the doctrines respecting Bills of Exchange and Promissory Notes in one and the same treatise, in the course of my instruction of the law students in Harvard University. The excellent work of Mr. Baron Bayley is used in our lectures as a text-book; and, as is well known, the doctrines concerning Bills of Exchange, and those concerning Promissory Notes, are in that work universally intermixed with each other, and the illustrations of those doctrines are constantly and indiscriminately drawn from each source, although they sometimes apply, not only with varied force, but also in an opposite manner; so that it is often found very difficult to make students completely understand the reasons, either for the coincidences, or the diversities. Besides, although many of the doctrines belonging to Bills of Exchange are equally applicable to Promissory Notes, with more or less qualifications and limitations, yet there are many doctrines peculiar to each of them, which cannot, without some violence to a just distribution and orderly arrangement of the materials find any appropriate place and connection in both. And I cannot but persuade myself, that some of the difficulties, which occasionally present themselves in the arguments at the bar upon these topics, arise from the confusion necessarily incident to the practice of thus blending authorities and doctrines, which, however cogent in them-

selves, often have but a remote bearing upon, or analogy to, the points directly in controversy in the case before the court.

“The plan, therefore, which I have adopted, is, to discuss the whole law, relating to Bills of Exchange, in the present volume, as a separate and independent treatise; and in another volume to present to the learned reader a full review, in a similar method, of the whole law relating to Promissory Notes, Checks, and other Negotiable Instruments of a kindred character. In executing this plan, I have availed myself freely of all the English Treatises extant upon the same subject, and especially of the work of Mr. Baron Bayley, which contains a full collection of the most important cases, and that of Mr. Chitty, which is very valuable from his great practical experience and familiar knowledge of the authorities; and I have occasionally made extracts from the crowded pages of the latter, to illustrate more fully than the brevity of my own text would allow, some doctrines and distinctions of an important nature. I have also extended my researches into Foreign Jurisprudence, and I have examined the works of some of the most distinguished foreign Jurists, and especially the writings of Savary, Pothier, Pardessus, and Heineccius. They are highly useful in stating general principles, but rarely extend their discussions into the more minute ramifications of those principles, which enter into the practical details of the daily business of commercial life. They expound the theory, and often discuss the abstract propriety, of particular rules and exceptions; and awaken a spirit of inquiry, although, perhaps, they do not always satisfy our judgment by their results. But it is to the elaborate judgments of the tribunals of England, that we must look for the most copious, exact, and minute instruction upon this important subject, and for thorough practical adaptations of general principles to the varied exigencies of human life, and the due administration of civil justice. America received from the parent country the materials, out of which she has

constructed her own system of Commercial Jurisprudence, and her labors have, as we trust, added to the common stock some valuable illustrations, and some solid doctrines. If the remark of Scaccia, made more than two hundred years ago, in the comparative infancy of commerce, was then true, it applies with far more force to us in the present age. Quinimo, Cambia, adeo sunt Reipublicæ utilia et necessaria, ut si Cambia cessarent, omnia pene mercaturæ officia dissiparentur, ac destituerentur.”<sup>1</sup>

This work was very favorably received by the profession, both at home and abroad, and was at once translated into German. Chancellor Kent, in his Commentaries, (vol. 3, p. 127,) speaks of it as “the most elaborate and complete treatise extant on the elementary principles of the subject. It is full and methodical, and executed with his masterly ability;” and the *Revue Étrangère*, speaking of it, says: “This work has been considered, both in the United States, England, and Germany, as one of the most important which have appeared on the subject. Mr. Story has explained, in a clear and precise manner, the developments which have taken place in the law of Bills of Exchange, and on every point he has given distinct principles, drawn from the nature of life and the necessities of trade. His eminently practical tact has enabled him to lay his finger upon the essential points.”

This work was dedicated to Hon. Simon Greenleaf, with the following letter:—

<sup>1</sup> Scaccia, Tract. de Comm. § 1, Quest. 6, § 14, p. 130, (edit. 1664.)

TO HON. SIMON GREENLEAF, LL. D.

Cambridge, January 2d, 1843.

MY DEAR SIR :

It was my original intention to dedicate to you the entire collection of my Juridical Works, when my labors in the Dane Professorship should be completed. But advancing years admonish me, that the term of my life may not be so far prolonged, as to enable me to reach the full consummation of my purposes. I avail myself, therefore, of the opportunity of dedicating this work to you, as a memorial of our long, uninterrupted, and confidential friendship. We have been coadjutors in the instructions of the Law Department of Harvard University for no brief period of time, and have united, heart and hand, in our endeavors to promote its prosperity and enlarge its usefulness. I can bear full testimony to the eminent ability, the unwearied diligence, the ample learning, and the conscientious fidelity, with which you have performed all your official duties. The general voice of the public has already awarded to you that tribute of praise, which never fails, first or last, to attend upon high desert; and to the Royall Professor may be emphatically applied the language of Cicero; *Is et ipse, scripsit multa præclare, et docuit alios.*" That you may long continue to occupy the Professorial chair with distinguished honor, and add to a reputation, already reposing on the most solid foundations, is the earnest wish of

Your affectionate friend,

JOSEPH STORY.

The following letters relate to this work :—



TO HON. MR. JUSTICE STORY.

33 Bedford Square, London, }  
 April 17th, 1843. }

MY DEAR SIR:

On my return from the Circuit, I find upon my table, from your publisher, a copy of your late work on Bills of Exchange, for which I beg you to accept my most hearty thanks. It is a valuable addition to those works, for which we in England, and all the civilized world, are deeply indebted to you.

With the highest respect, I subscribe myself,

Yours, very sincerely,

J. PATTESON.

TO HON. MR. JUSTICE STORY.

Montague Place, Bedford Square, }  
 May 1st, 1843. }

DEAR SIR:

I am very desirous of assuring you how thankful I am for your sending me this new work, (Bills of Exchange) and also of joining in the general feeling of acknowledgment which all lawyers must entertain towards you for your most valuable contributions to our library. A comparison with your course is not very flattering, I must admit, to your brethren on the English Bench; we are, it is true, very much engrossed by practice before we are made Judges, and by our duties afterwards; perhaps somewhat more so than is your lot in America. Still, that will not account for the whole difference between us. . . .

I must not pretend, for the reasons which have delayed my writing, to have found time as yet for reading the treatise on the Law of Bills of Exchange. I have only skimmed the heads of the chapters to see the frame of it, which, as far as I can venture to give an opinion, seems just what it should have been. I shall soon, at all events by reference, if not by immediately reading it through, know it better; and I

doubt not to find it what I may unfeignedly say I have hitherto found all your works to be, clear and copious, rich in authorities from many and various sources, always very unpretendingly set forth and well arranged. You have made good use of that advantage over English lawyers which American lawyers always must have — that the federal constitution of your commonwealth makes you necessarily familiar with International Law, while their peculiarities bring you also into contact with the Civil Law. The want of these cannot fail to make our legal knowledge less scientific than it ought to be.

Your faithful and much obliged servant,

J. T. COLERIDGE.

To this last letter my father sent the following answer: —

TO HON. MR. JUSTICE COLERIDGE.

Cambridge, June 1st, 1843.

DEAR SIR:

. . . I need not say how gratifying to me has been the approbation which my works have received from the Judges of England, and how ambitious it makes me to endeavor in future editions, if the public should continue to receive them with indulgence, the better to deserve it. No one, indeed, is more conscious of their defects than myself, but so completely is my time occupied by varied and increasing professional and judicial duties, that I am unable to command leisure to correct them, which I most earnestly desire to do. My health has been already seriously impaired by overworking, and I am but just recovered from a protracted illness, arising solely from this cause, which brought me to the brink of a typhus fever, from which I narrowly escaped. I am now reposing from labor, with a view to give entire confirmation to my health.

I have read the whole of the proceedings in the trial of

McNaughten with great interest. The doctrines maintained by the Court, as well as the verdict, seem to me entirely satisfactory and correct. Nor can I understand why the direction of the Court, advising to an acquittal, can be for a moment deemed exceptionable, since, if a verdict of guilty had been pronounced, the duty of the Court upon the evidence would be plain, to direct a new trial. I have no doubt that the sensitiveness of the public, as well as of the profession, on this subject, is in a good measure owing to the political and public character of the murder, and the sad but constant spectacle in our Courts of Justice, of the plea of insanity being constantly resorted to, and too often with undeserved success, as a shield and defence under desperate circumstances. I may add, too, that the testimony of physicians on this subject, and, indeed, on many others, is so loose, unsatisfactory, and sometimes so visionary and theoretical, that I have become habitually distrustful of it. And I cannot but entertain sincere doubts whether their opinions, as opinions, as to the question of insanity or not, ought to be admissible as evidence. In McNaughten's case it was not objected to, and, therefore, could not but have some weight, both with the Court and the jury. Since, however, the doctrine has been so much discussed in the House of Lords, I do hope that the Judges will be called upon to define, as far as they may, what is in point of law to be deemed insanity; for the language of some of the Judges in different cases admits of various interpretations, if not of distressing doubts.

I congratulate you upon the Ashburton treaty, so honorable to both countries, and I most sincerely join in the tributes of respect which the noble negotiator has received from both Houses of Parliament. To preserve peace between the two countries, I should have been prepared to submit to almost any sacrifice of territory, compatible with the honor of both countries, if called for. . . .

I have the honor to remain, with the highest respect, truly  
yours,

JOSEPH STORY.

In consequence of resuming his labors before his health was completely reëstablished, my father suffered a relapse, which obliged him again to abandon all work. From this attack his recovery was very slow, and his strength seemed so much impaired, that he was advised by his physicians to take a sea voyage; and as his friend Dr. Sewall was then projecting a visit to England, he urged my father to accompany him. The scheme promised much pleasure. My father had long wished to visit England,—to view its time-honored places, and to meet its distinguished men,—and he so far yielded to the suggestion of Dr. Sewall as to promise, in case his health did not materially improve before the steamer which was to carry his friend sailed, to take passage with him. In the anticipated happiness of this tour he indulged for a time, and yet he felt some reluctance to quit the regular habits and quiet enjoyments of home, and doubted whether the excitements of a visit to England would not be of disservice to him. Contrary to his own expectations and to those of his friends, his health began soon to rally, and before Dr. Sewall sailed it had so much improved, that he abandoned the project and concluded to remain at home. The news of his intention, however, had traversed the ocean, and were received in England with warm expressions of interest and kindness. Arrangements were there set on foot to receive him with distinction, and to give him a public dinner at Sergeants' Inn, a compliment which was very gratifying to him.

Upon receiving intelligence of his intended visit, Mr. Everett, the Minister of the United States in England, wrote the following very kind letter, forwarding invita-

tions to my father to dine from Lord Denman and Lord Brougham.

TO JUDGE STORY.

London, May 18th, 1843.

MY DEAR JUDGE:

We are all in great consternation at finding that you are not come by the "Britannia." I am fairly persecuted as a deluder. The cause is still more deplored than the fact. Lord Brougham, in inviting Lord Campbell to meet you at dinner on the 26th, said you were "the first jurist living." As this was said, without any suspicion that it would be repeated to me, still less to you, you must set it down as a sincere opinion. They proposed, in addition to more private honors, to give you a regular law dinner, at Sergeants' Inn.

Pray, dear Judge, throw the vials out of the window, and come and taste a little of the "Viginti Annorum" of these not unsociable sages.

You will get another parcel from me, which was meant to meet you at Liverpool.

In great haste, faithfully and affectionately, yours,

EDWARD EVERETT.

To this letter, the following answer was returned:—

TO EDWARD EVERETT, ESQ.

Cambridge, June 14th, 1843.

MY DEAR SIR:

I return you my sincere and hearty thanks for your kind letters which I received by the last steamer. You have deluded no one as to my expected visit to England, except by naturally placing confidence in the newspapers here, which announced my projected voyage long before it had seriously engaged my own thoughts. The truth is, that I was completely exhausted by overworking last year, and my strength was so entirely prostrated that I barely and narrowly escaped

at the eleventh hour a typhus fever, from which, if ever, I should not probably have recovered for many months. For a long time my convalescence was completely at a stand, and for months I neither went forward nor backward. It was at this time that my old Washington physician, Dr. Sewall, who was about to visit Europe, strenuously urged that I should accompany him; he intended to leave in the beginning of May, and my Boston physician, Dr. Shattuck, encouraged the project, and thought that if I did not grow better in the spring, a visit to Europe might be indispensable; but if I became decidedly better, it might not be expedient for me to visit England, as, if I did, I should probably exhaust all my strength under the excitements of that glorious country. I, therefore, did, in fact, make all my preliminary arrangements contingently; but always with the reserve that the experiment should proceed only in case of necessity. Things remained in this state until the beginning of April, and I was then so nearly restored, and, indeed, so near to a state of sound health, that we all agreed it would not do for me to risk a relapse by a visit to England, which would be a source of constant and exhausting pleasure to me, and would require the robustness of confirmed health to encounter. I gave up the scheme without reluctance, and I am fully persuaded that it was the only wise course for me to adopt. If I had concluded to go, I should have taxed your kindness to procure me suitable lodgings in London; and I actually at one time was so strongly impressed that I should be in London in May, that I was about to write you on the subject. My dreams of delight in such a visit to England, where so many of my deepest thoughts and feelings have long found a home, are for the present at an end and dissolved into thin air. My health at this moment is nearly as firm as it has been for years, and I repose from judicial and professional labors rather to secure myself against a premature devotion to business than from positive necessity. I am "making haste slowly," to be thoroughly well.

And now, my dear sir, after this somewhat tedious detail, let me give you my warmest thanks for your kind interest in me, and the kind offer of your services. I shall not easily forget them. Lord Brougham's and Lord Denman's invitations were, indeed, most unexpected, and truly gratifying, from being so early and prompt. I owe them much for such proffered hospitality to which I possess such slender claims. And I confess that tears came into my eyes, such was my infirmity, on reading their kind notes. For a moment, I felt a severe pang that I was not on board the *Britannia*. I wish, if you should have a convenient opportunity, that you would do me the favor to communicate to them how highly I appreciate the honor they intended me, and how sensibly I feel that it was but an overflow to a stranger of that thorough good-will, which lies at the bottom of the heart of every true English gentleman. I envy you the opportunity of meeting such men, at once an honor to the literature, learning, and law of England. Would to God that I could see Westminster Hall, and the Abbey, and the Houses of Parliament. A cluster of recollections belongs to them, almost unexampled in the history of the world.

I rejoice that you have declined the mission to China. It would, after all, have been but an honorable banishment. You are in the very position where you ought to be, and deserve to be, surrounded by all the interesting objects of "that land of scholars, and that nurse of arms." I am proud that America can in one of her own scholars show that he not only can represent his country in the most exalted manner, but that he can adorn her feasts and her festivals by his genius and eloquence.

Pray, give my best regards to Mrs. Everett, and believe me, as ever, most truly and affectionately, your friend,

JOSEPH STORY.

The following correspondence ensued between Mr. Everett and my father.

TO MR. JUSTICE STORY.

London, June 1st, 1843.

MY DEAR JUDGE:

I wrote you a hasty line, by the last steamer, to say how much regret had been occasioned by your not arriving in the steamer, of the 1st May. At Lord Brougham's dinner, on the 26th, there were assembled to meet you, the Lord Chancellor, Lords Denman, Campbell, Spencer, Lansdowne, Auckland, and Clarendon, Lord Chief Justice Tindal, Dr. Lushington, Sir Frederick Pollock, Mr. Austin, and one or two other gentlemen, with all of whom, your absence was a matter of emphatically expressed regret. The next day, at Lord Denman's, which was also a dinner got up for you, there were Lord Chancellor, Lords Abinger and Brougham, Baron Parke, Mr. Justice Wightman, Sir Frederick Pollock, and others. Baron Alderson, I am sorry to say, was absent, in consequence of dangerous illness, from which, however, according to the papers, he is convalescent. A few days ago, Mr. Justice Patteson, thinking you were in town (a rumor to that effect having prevailed) called upon me to learn your address, and to make the more sure that you should not fail to be informed of his wish to pay his respects to you, he left his card, and that of Mr. Justice Coleridge. I really think, however lightly you may deem of that "empty life in others' breath," called fame, that you must be gratified at the honor in which your name, character, and writings, are held in this country. And most devoutly do I wish you would (or could) come, and reap the harvest of your own sowing. For an American Judge to be daily cited in the British Courts, from the highest of all, the Court of Parliament, down; and to have his books alluded to as the proof, that certain branches of jurisprudence, and those the nobler ones, are more extensively and successfully cultivated in America than in England,



may well be regarded as an offset for the taunts of tourists and reviewers.

I wish you would ever allow me to be of any use to you here; and I pray you believe me, my dear Judge, with sincere attachment,

Your ancient, and faithful friend,

EDWARD EVERETT.

TO HON. EDWARD EVERETT.

Cambridge, June 26th, 1843.

MY DEAR SIR:

I owe you many thanks for your letter by the last steamer, containing an enumeration of the guests at the dinners of Lords Brougham and Denman. I need scarcely say how much I should have felt myself honored by being present with such men; among the most distinguished for rank, character, and attainments, in the whole kingdom. I seem to myself, even at this distance, to have partaken and enjoyed their conversation and conviviality, as one invited to the pleasures of the fabled feasts of the gods.

I have availed myself of the kindness of the Hon. Abbott Lawrence to hand you this letter. He visits England solely for his health, and without any political or other objects whatsoever. He can scarcely be otherwise than well known to you, as he served in Congress for several terms as a representative from Boston, and obtained a very high reputation and just distinction there for great practical information, and thorough mastery of the interests of commerce and finance. We all deeply lamented his withdrawal from the public councils, partly from ill health, and partly that he might devote himself more exclusively to more agreeable pursuits. I know of no one among us who now enjoys a more enviable reputation for integrity, intelligence, and public and private virtue. He might have been, if he had not steadfastly declined all public office, at this moment, our Whig can-

didate for Governor; and I am sure that he possesses, in the nation at large, an equally enviable reputation. I will not disguise from you, that under these circumstances, I feel no small solicitude, that during his brief stay in England, he should be brought in contact with some of the great parliamentary leaders and statesmen. His frank and conciliating manners, his sterling conservative principles, his candor and ability, I am persuaded, would make them understand more thoroughly our position and interests, if not their own, upon the great subjects of finance and international intercourse; and his well tried integrity ought to give a weight to his opinions, with all well wishers to the good of England and America. I have the greatest confidence in the soundness of his judgment, and the purity of his heart.

England seems to me approaching a very critical period of her national existence; and as I look upon her as the great European support of the cause of free government and law and order and well regulated liberty, I take the liveliest interest in every movement on that side of the Atlantic. I rejoice in the honors paid to Lord Ashburton in Parliament, and deem them most worthily earned by him. The situation of Ireland at this moment seems to me full of danger and difficulty. Upon the subject of the Union, I go warmly and heartily with the ministry. In my humble judgment, it cannot be surrendered by England, without involving her safety and prosperity, and delivering over Ireland to be a prey to domestic factions and foreign influences. If I were an English statesman, I never would yield on this point. On all others, I would yield much for conciliation and peace.

Believe me, with the truest regard and respect,

Your much obliged and affectionate friend,

JOSEPH STORY.

The subject of his projected visit to England is alluded to in the following letter.

TO HON. EZEKIEL BACON.

Cambridge, April 22d, 1843.

MY DEAR SIR:

. . . It grieves me to learn that you are relapsing into a state of ill health, although I have for some time feared that so various and prolonged intellectual efforts, as you have recently indulged in, might produce what the physicians call "indirect debility and exhaustion." I believe that I must now preach to you what my friends have been accustomed to preach to me for some months, an almost total abstinence from labor. I trust and pray that you may long retain a good share of health, for at our age, we can scarcely expect firm and vigorous health. Indeed, as I find my earlier friends, one after another, dropping away, I cling with more earnest solicitude to those who remain, feeling as I do, how vain it is to create new friendships, if one could; how far less consolatory they would be than the old. . . .

I have given up all thoughts of visiting Europe, since my health is becoming gradually restored. If I were to visit England, the country of all others which I should most desire to see, I fear that the excitements to which I should unavoidably be subjected there, would be too much for my strength, and that there is no small danger that I might fall a victim to them. At my age I have no desire to become even the humblest of the "lions," who make their entrance and exit upon the public stage of London. I love my home and I want repose; and I am willing to die, as I have lived, in the bosom of my native land. If, during the remaining years which a good Providence may assign to my lot, I shall be permitted to retain my faculties, the kindness of my friends, and a steadfast adherence to good principles, I shall reap all the rewards to which I can now aspire on this side of the grave. Such rewards you have richly earned by a life of virtuous exertion and religious conscientiousness; and what I most desire for you is, that you may

be permitted to possess such bright and cheering consolations to the close of your own career.

Believe me, most truly and affectionately,

Your friend,

JOSEPH STORY.

The next letter contains suggestions as to the question of Chancery Reform, then pending in England, and refers to the celebrated case of Lady Hewley's Charity, (*Attorney-General v. Shore*, 7 Simons's R. 290, note,) in which it was held that Unitarians were not "godly and pious persons" within the terms of her bequest, so as to enable them to act as trustees of her donation, or to receive any benefit therefrom.

TO EDWIN W. FIELD, ESQ.

Cambridge, March 27th, 1843.

MY DEAR SIR:

. . . I confess myself all along to have had great difficulties in the Lady Hewley case. The opinion of the Vice-Chancellor, and also of Lord Lyndhurst, and the Judges who assisted him, embraced principles as to the interpretation of words and the admission of parol evidence to explain the language of wills and deeds, which appeared to be not easily reconcilable with the established principles. I perceive that the House of Lords have not adopted these opinions in full, but have proceeded on a narrow and limited ground, which in a great measure superseded the necessity of considering them. The ground of the House of Lords is intelligible and clear. I agree that the trust-money could and ought to be applied only to objects and persons who might legally partake of it. My own difficulty is, whether, as soon as Unitarianism was recognized as a lawful mode of Christian worship, under the Act of Parliament, Unitarian ministers were not "godly

and pious persons" within the meaning of the donation of Lady Hewley, so as to partake *in futuro* of the bounty.

But if the broader doctrines, broached in the opinions of the Vice-Chancellor, &c., were to be maintained, I should ask, what would become of the mass of charitable donations given by Roman Catholics before the Reformation, and now enjoyed by members of the Church of England? However, I am by no means clear that Lord Cottenham's judgment in *Attorney-General v. Pearson*, (7 Simons's R. 290,) is not sound, but I confess that my own opinion, upon the imperfect view which I have been able to take of the case, coincides with that of Mr. Justice Maule. It is not improbable that I am led to this conclusion, by the institutions and habits of thinking on theological subjects in my own country, and thus have insensibly acquired a bias in that direction.

I hope that the subject of Chancery reform will be taken up by your Judges in the freest and most enlarged spirit, to simplify, and to render as little expensive, and as certain and rapid in progress as possible, the whole proceedings.

In the Supreme Court of the United States in 1842, the Court, acting under a limited authority, passed many new rules for the government of the Courts of the United States in Equity suits. I send you, herewith, a copy of those rules, in reading which, you will at once perceive, that all the recent rules adopted by the Court of Chancery, were before the Court, and many of those rules were adopted into our practice. Since that time, another Act of Congress has conferred on the Court the like authority to alter the process, pleadings, &c., which Parliament has given to no Court of Chancery. It is highly probable that we shall not definitely act upon this subject, until we know what is done on your side of the Atlantic. The whole machinery is now extremely cumbrous, tardy and unsatisfactory. Let the Judges once determine that they will go to the bottom of the matter, and not rest satisfied with any half-way measures, or patch-

ing up of the old system, and I am quite sure that they will create a new era in Chancery suits, and render themselves the truest benefactors to their country. I feel persuaded, that in America, we shall follow out every improvement, which they may suggest.

It grieved me much to hear of the sudden death of Mr. Sutton Sharpe, whose eminent rank, and increasing reputation at the Bar, were well known to us. It is a great public loss. . . .

Believe me, with the highest respect,

Faithfully, yours,

JOSEPH STORY.

The Rules of Equity, spoken of in this letter, were drawn up by my father.

On the 20th of June, in this year, Hon. Hugh S. Legaré, the accomplished Attorney-General of the United States, and Secretary of State *ad interim*, died at Boston. On Thursday, the 22d of June, my father at his lecture on the Constitution of the United States, made the following remarks on his life and character, which were taken down by a gentleman present and afterwards published in the Law Reporter for August, 1843.

“When I last met you, I little anticipated the calamitous event, which has since occurred, in the death of a distinguished man who expired in the city of Boston on Tuesday morning last. Whoever considers the principles of the Constitution can never forget him; for he was firm and true to its doctrines, and exhibited that elevated and comprehensive statesmanship, which the Constitution demands of its real friends. I refer, of course, to Mr. Legaré, the late Attorney-General, with whom I had the happiness to be intimately acquainted; whom I knew not only as an accomplished gen-

tleman, but also as a great lawyer. I speak of him to you here, not merely to pay a deserved tribute to his worth, but because I know of no man whom I would sooner propound as an example to young men entering the profession, which he has so much adorned. I had indeed looked to him with great fondness of expectation. I had looked to see him accomplish what he was so well fitted to do, — what, I know, was the darling object of his pure ambition — to engraft the Civil Law upon the jurisprudence of this country, and thereby to expand the Common Law to greater usefulness and a wider adaptation to the progress of society.

“Mr. Legaré was a native of South Carolina, and was graduated, I understand, at an early age, at Columbia College. He proceeded, soon after he left that institution, to Edinburgh, where he devoted himself, with great diligence and intensity of study, to general and classic literature. He then went to the Continent and pursued the study of the Civil Law with great assiduity and success, and afterwards returned to South Carolina to practise, and became soon eminent at the Bar of that State.

It is a most singular circumstance, that eminence in general literature should, in the public mind, detract from a man's reputation as a lawyer. It is an unworthy prejudice, for certainly the science of jurisprudence may borrow aid as well as receive ornament from the cultivation of all the other branches of human knowledge. But the prejudice exists; — and yet one would think that the public had witnessed so many examples of men who were great scholars and great lawyers likewise, that the prejudice might be at this day disarmed of so much of its quality, as is apt to do injustice to the reputation of living men. Lord Mansfield was a most eminent scholar in general letters; but he was also unsurpassed in jurisprudence. Sir William Blackstone was so elegant a scholar, that his Commentaries are models of pure English prose; but they are none the less the invaluable mine of the Laws of England. Lord Stowell, the friend and

executor of Dr. Johnson, was in various attainments exceeded by few; but his knowledge of general jurisprudence was greater than that of any man of his day. Some of the proudest names now on the English benches are some of England's best scholars. But there as well as here — though certainly it is far greater here — the public prejudice almost denies to a great scholar the right to be eminent as a jurist. Dr. Johnson has said, —

‘And mark what ills the scholar’s life assail,  
Toil, envy, want, the patron and the gaol.’

“None of these were the evils of our friend. His only evil was, that his reputation as a lawyer was sometimes underrated, because of his great general attainments. But nothing could be more unfounded than this idea. He considered the law as his pursuit; as his object; as the field of his ambition. Fifteen years ago I knew him as an eminent lawyer. He afterwards went abroad in a diplomatic capacity; and, at Brussels, where he resided, devoted himself anew to the study of the Civil Law, with a view to make it subservient to the great object of his life, the expansion of the Common Law, and the forcing into it the enlarged and liberal principles and just morality of the Roman jurisprudence. This object he seemed about to accomplish; for his arguments before the Supreme Court were crowded with the principles of the Roman Law wrought into the texture of the Common Law with great success. In every sentence that I heard, I was struck with this union of the two systems. At the same time, the whole was wrought in a style, beautiful and chaste, but never passing from the line of the argument, nor losing sight of the cause. His argumentation was marked by the closest logic; at the same time he had a *presence* in speaking, which I have never seen excelled. He had a warm, rich style, but no declamation; for he knew that declamation belongs neither to the jurist nor to the scholar.



“ It was only during the last summer, that he wrote to me that he intended to translate Heineccius’s *Elements*; for he wished, he said, to entice the American lawyer to the study of the Civil Law. He added, that he had nothing to gain by undertaking such a work, but that he would undergo the labor as a homage to his country. Knowing his eminent qualifications for the task, I advised him to make the translation, and to add to it notes of his own, so as to adapt the principles to the existing state of the Common Law; telling him that he would thereby confer a benefit on his country which no man of the age would be likely to exceed.

“ A few years since, he published a paper in the *New York Review*, on the Origin, History, and Influence of Roman Legislation, and afterwards printed it separately from the *Review* itself. Whoever reads that essay—and I hope you will read it—will perceive his attainments in the Civil Law. You, who have not heard him, cannot judge of his attainments in the Common Law; but I, who heard his arguments, know that he devoted himself to the Common Law with a wise perception of its defects, and a purpose to ameliorate them with the riches of the Civil Law; and I may say of him, having seen his mastery of both systems of jurisprudence—that he walked with them triumphantly, the one in one hand, and the other in the other hand, in the path of a great jurist.

“ Although he might have had other places in the gift of the government—as I have been told—yet he desired only the office of Attorney-General, and he desired that for the sake of the law. When, therefore, the question is asked, was he eminent as a lawyer? I answer; no man more so. Do you ask, what was the secret of his eminence? I answer, it was diligence, profound study, and withholding his mind from the political excitements of the day.

“ To me, his loss is irreparable. How few do I see around me, severe in their studies in jurisprudence; willing to devote their days and nights to the mastery and improvement of it

as a great science ; and looking for the fame that comes from devotion like his. Such study is not fanned by the breath of popular applause, and so it is rare. But in him it shone most brilliantly. I pronounce him a great loss, as one of the most valuable lights of jurisprudence that it has been my happiness to know, — my misfortune to lose.

“ It was but the day before yesterday — and before I had heard of his death, the news of which met me as I was going from my own house — that I had taken down *Cicero de Claris Oratoribus*, and had turned to the passage where he begins —

“ ‘ As I was leaving Cilicia to go to Rhodes, I heard of the death of Hortensius.’ Hortensius, the great Roman lawyer, so much and so justly praised by Cicero, died, as we are told, when his usefulness had been completed. How different from him, who has been taken from us when we had just learned to appreciate his inestimable value to the jurisprudence of the country. To Cethegus, another orator, Cicero applies the remark of Ennius, —

‘ Is dictus ollis popularibus olim,  
Qui tum vivebant homines, atque ævum agitabant,  
Flos delibatus populi.’

“ I say of the Attorney-General, not *Flos delibatus populi* ; I say of him, *Flos delibatus juris*.

“ As I looked a little farther, I came upon the passage, which, by a striking coincidence, expressed what has since been realized to my own feelings, as the full influence of such a life ; a life, the only deep lamentation for which is, that it gave him so little time to make himself fully appreciated by the whole Republic. I give you the English first, that I may afterwards give you the more beautiful Latin : ‘ They therefore seem to me to have lived both fortunately and happy, not only in other States, but especially in ours, who have been permitted not merely to enjoy authority and the renown of action, but also to attain the praise of wisdom,

whose memory and reputation, in our gravest and severest cares, have been truly grateful, whenever in history we have fallen upon them.’<sup>1</sup>

“I dismiss the subject, with the remark, that the Constitution has lost one of its best friends; the Supreme Court one of its brightest ornaments; the country an inestimable man, whose independence, whose public virtue, whose rare endowments, and whose freedom from all the arts of popularity gave full assurance of a life of the highest value to the State. To me, had my own career closed before his, a single word of praise from his lips, could I have looked back to know it, would have been as valuable a tribute as from any other human being.”

The Law Reporter, in publishing these remarks, adds “a letter from an esteemed correspondent,” the following extract from which forms an appropriate conclusion to this tribute to Mr. Legaré.

TO THE EDITOR OF THE LAW REPORTER.

Washington, July 12th, 1843.

“A recent number of the National Intelligencer contained the elegant tribute to the character and learning of the late Attorney-General of the United States, which Mr. Justice Story introduced in a lecture to the students at Dane Law College. The closing sentence is felicitously expressed: ‘To me, had my own career closed before his, a single word of praise from his lips, could I have looked back to know it, would have been as valuable as from any other human being.’

<sup>1</sup> Itaque ii mihi videntur fortunate beateque vixisse, cum in cæteris civitatibus, tum maxime in nostra, quibus cum auctoritate, rerumque gestarum gloria, tum etiam sapientiæ laude perfrui licuit. Quorum memoria et recordatio in maximis nostris gravissimisque curis jucunda sane fuit, cum in eam nuper ex sermone quodam incidissemus. — Cic. *De Clar. Orat.* 2.

“The elaborate essay by Mr. Legaré, ‘On the Origin, History, and Influence of Roman Legislation,’ contains evidence that his pen was not silent as to the accomplishments of the learned Judge. It is in my power to testify, that his lips were eloquent in his praise. During a conversation with Mr. Legaré, not long since, he remarked, ‘What a wonderful man is Judge Story! his labors and his services have been immense; he is the greatest living lawyer; he is not old; ten years more of life would be of inestimable value to the country.’

“The conversation was interesting, and certain portions I have already communicated to another person, to whom Mr. Legaré alluded in terms of approbation. His language made a strong impression upon me, not only from its truthfulness, but from the fervent and heartfelt manner in which he poured forth his thoughts, at a time when he was evidently not contemplating the rapid termination of his own career. His commendation will lose much of its value, if I am to remain the sole depository of it. I hope it is worthy of diffusion through the medium of the Law Reporter. It is no infirmity for one as distinguished as the author of ‘Commentaries on the Conflict of Laws’ to value the praise of honorable men. Cicero commends a passage in the play of Hector, by Cneus Nævis, an early author, where the hero, delighted with the praises of his father Priam, exclaims, —

Lætus sum

Laudari me abs te, pater, laudato viro.

## CHAPTER XII.

### PROFESSORIAL AND JUDICIAL LIFE.

HEALTH—PUBLISHES THIRD EDITIONS OF BAILMENTS, EQUITY JURISPRUDENCE, AND AGENCY—CASE OF “*VIDAL v. GIRARD’S EXECUTORS*”—EXPLOSION OF THE GUN “PEACEMAKER”—DEDICATION OF VESEY’S REPORTS—“*FOLSOM v. MARSH*”—EXTRACT FROM THE JUDGMENT—VACANCIES ON THE SUPREME COURT BENCH—LETTER ON LEGAL INSTRUCTION—ANNEXATION OF TEXAS—HIS OPPOSITION TO IT—CONCURRENCE OF VIEW WITH DR. CHANNING ON THIS SUBJECT—LECTURE BY MR. BACON—CIRCUIT LABORS—“*JENKINS v. ELDREDGE*”—ELECTION OF MR. POLK—DESPONDENCY—MODE OF LECTURING IN THE LAW SCHOOL—LECTURES ON WILLIAM PINKNEY, ESQ. AND CHIEF JUSTICE PARSONS.

By the autumn of 1843, my father’s health was completely reestablished. He now applied himself with great ardor to his judicial duties, and cleared off the accumulated docket of two terms, which, in consequence of his illness, had become very large, and was crowded with cases arising under the Bankrupt Law. Not to have done this would have annoyed him more than the labor necessary to perform it. He never could rest content while he was in the least behindhand and encumbered with duties belonging to the past. He was only happy when he was abreast of the present. During this autumn he also prepared a third edition of his Commentaries on the Law of Bailments, on Equity Jurisprudence, and on Agency, to the thorough revision of which

he gave much time. Notwithstanding this accumulation of work, his health continued to improve, and in the beginning of the year 1844 he attended the session of the Supreme Court at Washington. Unfortunately, in consequence of illness, the Chief Justice was disabled from attending the Court during a portion of the term, and my father was thus compelled to act in his behalf; and as the cases tried during this term were important, he found little leisure at Washington.

Among the cases which came before the Supreme Court in 1844, was that of *Vidal v. Girard's Executors*, (2 Howard's R. 128.) The circumstances of this case were these: Mr. Stephen Girard, a very wealthy citizen of Philadelphia, had made a large bequest, of real and personal property, to the corporation of the city of Philadelphia, in trust for the erection and support of a college for the education and support of poor orphans, under certain restrictions and regulations, one of which was in these words:—

“Secondly, I enjoin and require that no ecclesiastic, missionary, or minister of any sect whatsoever, shall ever hold or exercise any station or duty whatever in the said college; nor shall any such person ever be admitted for any purpose, or as a visitor, within the premises appropriated to the purposes of the said college.

“In making this restriction, I do not mean to cast any reflection upon any sect or person whatsoever; but, as there is such a multitude of sects, and such a diversity of opinion amongst them, I desire to keep the tender minds of the orphans, who are to derive advantage from this bequest, free from the excitement which clashing doctrines and sectarian controversy are so apt to produce; my desire is, that all the

instructors and teachers in the college shall take pains to instil into the minds of the scholars the purest principles of morality, so that, on their entrance into active life, they may, from inclination and habit, evince benevolence towards their fellow-creatures, and a love of truth, sobriety, and industry, adopting at the same time such religious tenets as their matured reason may enable them to prefer."

A bill in Equity was brought by some of the heirs of Mr. Girard, praying for relief against the provisions of this will, on the ground that the charity was void, for uncertainty and illegality; and the points made by the counsel for the appellant, upon the removal of the case to the Supreme Court, were,—

"1. That the bequest of the college fund is to this amount void, by reason of the uncertainty of the designation of the beneficiaries or *cestui que trusts* of the legacy.

"2. That the corporation of the city of Philadelphia is not authorized by its charter to administer the trusts of this legacy, and that the intentions of the testator would be defeated by the substitution of any other trustee.

"3. That, if otherwise capable of taking effect, the trust would be void, because the plan of education proposed is anti-christian, and therefore repugnant to the law of Pennsylvania, and is also opposed to the provision of Art. IX. sect. 3, of the Constitution of Pennsylvania, that 'no human authority can in any case whatever control or interfere with the rights of conscience.'"

The Court (my father delivering the judgment) held that the will was valid. That portion of the judgment which relates to the third point was as follows:—

"This objection is, that the foundation of the college upon

the principles and exclusions prescribed by the testator, is derogatory and hostile to the Christian religion, and so is void, as being against the common law and public policy of Pennsylvania; and this for two reasons: First, because of the exclusion of all ecclesiastics, missionaries, and ministers of any sect from holding or exercising any station or duty in the college, or even visiting the same; and secondly, because it limits the instruction to be given to the scholars to pure morality, and general benevolence, and a love of truth, sobriety, and industry, thereby excluding, by implication, all instruction in the Christian religion.

“In considering this objection, the Court are not at liberty to travel out of the record in order to ascertain what were the private religious opinions of the testator, (of which, indeed, we can know nothing,) nor to consider whether the scheme of education by him prescribed, is such as we ourselves should approve, or as is best adapted to accomplish the great aims and ends of education. Nor are we at liberty to look at general considerations of the supposed public interests and policy of Pennsylvania upon this subject, beyond what its constitution and laws and judicial decisions make known to us. The question, what is the public policy of a State, and what is contrary to it, if inquired into beyond these limits, will be found to be one of great vagueness and uncertainty, and to involve discussions which scarcely come within the range of judicial duty and functions, and upon which men may and will complexionally differ. Above all, when that topic is connected with religious polity, in a country composed of such a variety of religious sects as our country, it is impossible not to feel that it would be attended with almost insuperable difficulties, and involve differences of opinion almost endless in their variety. We disclaim any right to enter upon such examinations, beyond what the State Constitutions, and laws, and decisions, necessarily bring before us.

“It is also said, and truly, that the Christian religion is a



part of the common law of Pennsylvania. But this proposition is to be received with its appropriate qualifications, and in connection with the bill of rights of that State, as found in its constitution of government. The Constitution of 1790, (and the like provision will, in substance, be found in the Constitution of 1776, and in the existing Constitution of 1838,) expressly declares, ‘That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent; no human authority can, in any case whatever, control or interfere with the rights of conscience; and no preference shall ever be given by law to any religious establishments or modes of worship.’ Language more comprehensive for the complete protection of every variety of religious opinion could scarcely be used; and it must have been intended to extend equally to all sects, whether they believed in Christianity or not, and whether they were Jews or infidels. So that we are compelled to admit, that although Christianity be a part of the common law of the State, yet it is so in this qualified sense,—that its divine origin and truth are admitted, and therefore it is not to be maliciously and openly reviled and blasphemed against, to the annoyance of believers or the injury of the public. Such was the doctrine of the Supreme Court of Pennsylvania in *Updegraff v. The Commonwealth*, 11 Serg. and Rawle, 394.

“It is unnecessary for us, however, to consider what would be the legal effect of a devise in Pennsylvania for the establishment of a school or college, for the propagation of Judaism, or Deism, or any other form of infidelity. Such a case is not to be presumed to exist in a Christian country; and therefore it must be made out by clear and indisputable proof. Remote inferences, or possible results, or speculative tendencies, are not to be drawn or adopted for such purposes. There must be plain, positive, and express provisions, demon-

strating not only that Christianity is not to be taught, but that it is to be impugned or repudiated.

“ Now, in the present case, there is no pretence to say that any such positive or express provisions exist, or are even shadowed forth in the will. The testator does not say that Christianity shall not be taught in the college, but only that no ecclesiastic of any sect shall hold or exercise any station or duty in the college. Suppose, instead of this, he had said that no person but a layman shall be an instructor or officer or visitor in the college, what legal objection could have been made to such a restriction? And yet the actual prohibition is in effect the same in substance. But it is asked, why are ecclesiastics excluded, if it is not because they are the stated and appropriate preachers of Christianity? The answer may be given in the very words of the testator. ‘ In making this restriction,’ says he, ‘ I do not mean to cast any reflection upon any sect or person whatsoever. But as there is such a multitude of sects, and such a diversity of opinion amongst them, I desire to keep the tender minds of the orphans, who are to derive advantage from this bequest, free from the excitement which clashing doctrines and sectarian controversy are so apt to produce.’ Here, then, we have the reason given; and the question is not, whether it is satisfactory to us or not, nor whether the history of religion does or does not justify such a sweeping statement; but the question is, whether the exclusion be not such as the testator had a right, consistently with the laws of Pennsylvania, to maintain, upon his own notions of religious instruction. Suppose the testator had excluded all religious instructors but Catholics, or Quakers, or Swedenborgians; or, to put a stronger case, he had excluded all religious instructors but Jews, would the bequest have been void on that account? Suppose he had excluded all lawyers, or all physicians, or all merchants, from being instructors or visitors, would the prohibition have been fatal to the bequest? The truth is, that in cases of this sort,

it is extremely difficult to draw any just and satisfactory line of distinction, in a free country, as to the qualifications or disqualifications which may be insisted upon by the donor of a charity, as to those who shall administer or partake of his bounty.

“ But the objection itself assumes the proposition that Christianity is not to be taught, because ecclesiastics are not to be instructors or officers. But this is by no means a necessary or legitimate inference from the premises. Why may not laymen instruct in the general principles of Christianity as well as ecclesiastics? There is no restriction as to the religious opinions of the instructors and officers. They may be, and doubtless, under the auspices of the city government, they will always be, men not only distinguished for learning and talent, but for piety and elevated virtue, and holy lives and characters. And we cannot overlook the blessings, which such men by their conduct, as well as their instructions, may, nay, must impart to their youthful pupils. Why may not the Bible, and especially the New Testament, without note or comment, be read and taught as a divine revelation in the college—its general precepts expounded, its evidences explained, and its glorious principles of morality inculcated? What is there to prevent a work, not sectarian, upon the general evidences of Christianity, from being read and taught in the college by lay-teachers? Certainly there is nothing in the will that proscribes such studies. Above all, the testator positively enjoins, ‘ that all the instructors and teachers in the college shall take pains to instil into the minds of the scholars the purest principles of morality, so that on their entrance into active life they may from inclination and habit evince benevolence towards their fellow-creatures, and a love of truth, sobriety, and industry, adopting at the same time such religious tenets as their matured reason may enable them to prefer.’ Now, it may well be asked, what is there in all this, which is positively enjoined, inconsistent with the spirit or truths of Christianity? Are not these truths all taught by

Christianity, although it teaches much more? Where can the purest principles of morality be learned so clearly or so perfectly as from the New Testament? Where are benevolence, the love of truth, sobriety, and industry, so powerfully and irresistibly inculcated as in the sacred volume? The testator has not said how these great principles are to be taught, or by whom, except it be by laymen, nor what books are to be used to explain or enforce them. All that we can gather from his language is, that he desired to exclude sectarians and sectarianism from the college, leaving the instructors and officers free to teach the purest morality, the love of truth, sobriety, and industry, by all appropriate means; and of course including the best, the surest, and the most impressive. The objection, then, in this view, goes to this,—either that the testator has totally omitted to provide for religious instruction in his scheme of education, (which, from what has been already said, is an inadmissible interpretation,) or that it includes but partial and imperfect instruction in those truths. In either view, can it be truly said that it contravenes the known law of Pennsylvania upon the subject of charities, or is not allowable under the article of the bill of rights already cited? Is an omission to provide for instruction in Christianity in any scheme of school or college education a fatal defect, which avoids it according to the law of Pennsylvania? If the instruction provided for is incomplete and imperfect, is it equally fatal? These questions are propounded, because we are not aware that any thing exists in the Constitution or laws of Pennsylvania, or the judicial decisions of its tribunals, which would justify us in pronouncing that such defects would be so fatal. Let us take the case of a charitable donation to teach poor orphans reading, writing, arithmetic, geography, and navigation, and excluding all other studies and instruction; would the donation be void, as a charity in Pennsylvania, as being deemed derogatory to Christianity? Hitherto it has been supposed, that a charity for the instruction of the poor might be good and valid in England, even if

it did not go beyond the establishment of a grammar-school. And in America, it has been thought, in the absence of any express legal prohibitions, that the donor might select the studies, as well as the classes of persons, who were to receive his bounty without being compellable to make religious instruction a necessary part of those studies. It has hitherto been thought sufficient, if he does not require any thing to be taught inconsistent with Christianity.

“Looking to the objection, therefore, in a mere juridical view, which is the only one in which we are at liberty to consider it, we are satisfied that there is nothing in the devise establishing the college, or in the regulations and restrictions contained therein, which are inconsistent with the Christian religion, or are opposed to any known policy of the State of Pennsylvania.”

This case is alluded to in the following letter:—

TO MRS. JOSEPH STORY.

Washington, February 7th, 1844.

MY DEAR WIFE:

We have been for several days engaged in Court, in hearing arguments upon the great case of the Girard will, which involves seven millions of dollars; the heirs insisting that the main bequest for building a college for orphans, is void. Mr. Jones, of this city, spoke on it nearly three days; Mr. Binney, of Philadelphia, has been speaking on the opposite side (for the city) nearly three days, and has made a most masterly argument; Mr. Sergeant, of Philadelphia, is to follow on the same side, and the argument is to be concluded by Mr. Webster, for the heirs.

February 10. Saturday evening. I was here again interrupted, and for the first time am now able to resume my pen. In the case of the Girard will, the arguments have been con-



tested with increasing public interest, and Mr. Sergeant and Mr. Binney concluded their arguments yesterday. A vast concourse of ladies and gentlemen attended with unabated zeal, and earnest curiosity through their speeches, which occupied four days. Mr. Webster began his reply to them to-day, and the Court-room was crowded, almost to suffocation, with ladies and gentlemen to hear him. Even the space behind the Judges, close home to their chairs, presented a dense mass of listeners. He will conclude on Monday. The curious part of the case is, that the whole discussion has assumed a semi-theological character. Mr. Girard excluded ministers of all sects from being admitted into his college as instructors or visitors; but he required the scholars to be taught the love of truth, morality, and benevolence, to their fellow-men. Mr. Jones and Mr. Webster contended, that these restrictions were anti-Christian, and illegal. Mr. Binney and Mr. Sergeant contended, that they were valid, and Christian, founded upon the great difficulty, of making ministers cease to be controversialists, and forbearing to teach the doctrines of their sect. I was not a little amused, with the manner in which, on each side, the language of the Scriptures, and the doctrines of Christianity, were brought in to point the argument; and to find the Court engaged in hearing homilies of faith, and expositions of Christianity, with almost the formality of lectures from the pulpit. . . .

Yours, most affectionately,

JOSEPH STORY.

Another important case which came before the Supreme Court at this session, was "The Bank of the United States *v.* The United States," (2 Howard's R. 211.) It is alluded to in the following letter.

TO HON. JAMES KENT, LL. D.

Cambridge, August 31st, 1844.

MY DEAR SIR:

I owe you many thanks for your last most interesting letter. I should have replied to it before, if I could have found leisure; but I have been writing opinions, and hearing arguments in Court and out of Court, even since the beginning of May, and am not as yet out of the woods. Indeed, I am sadly overworked, and yet, I can scarcely avoid it; so important, so pressing, and so intricate are the cares flowing constantly in upon me. My health, however, is not broken down by the labor, although I live in constant dread that it may be. I know not how some Judges get over, or round their judicial duties; they are either much quicker and clearer and stronger than I am, or they are more easily satisfied by giving their first, off-hand opinions. This I cannot do. I feel bound to do my best, and to examine, and as far as I may, exhaust the learning of the books, before I venture on my judgments. . . .

I rejoice to know your opinion in the Girard case. The Court were unanimous, and not a single sentence was altered by my brothers, as I originally drew it. I confess, that I never doubted on the point; but it is a great, a sincere comfort to have your judgment, free, independent, learned, on it. Mr. Webster did his best for the other side, but it seemed to me, altogether, an address to the prejudices of the clergy.

I equally rejoice, that the Supreme Court has at last come to the conclusion, that a corporation is a citizen, an artificial citizen, I agree, but still a citizen. It gets rid of a great anomaly in our jurisprudence. This was always Judge Washington's opinion. I have held the same opinion for very many years, and Mr. Chief Justice Marshall had, before his death, arrived at the conclusion, that our early decisions were wrong.

The case of the United States Bank I was for, *totis viribus*, and I see no reason now to doubt it. The Government took the money from the Bank to meet their necessities, and I for one am not prepared to say, that their contract, in drawing bills of exchange, has a different interpretation from that of any private person. I know of no rule by which Government contracts do not bind exactly as those of individuals. If they will turn traders and bankers, let them share the like responsibility. They have always insisted, when they bought bills, to have the usual damages upon the dishonor of them. Why should not the rule, and the honesty of it, be just as obligatory on the Government as on you or me?

I must close these hasty lines. Pray give my kindest regards to Mrs. Kent, and believe me,

Most truly and affectionately, yours,

JOSEPH STORY.

During this year, Mr. Justice Duvall, formerly of the Supreme Court of the United States, but who, for some years, had retired from the Bench, died; and, on the opening of the Court, on March 11th, a preamble and resolutions, passed at a previous meeting of the Bar, containing an honorable tribute to his private character and judicial services, being presented to the Supreme Court, to be entered on their minutes, my father, in behalf of the Chief Justice, who was absent, made the following reply:—

“The Court has received with the most unaffected sincerity the remarks which have been made at the Bar, upon the death of our late venerable friend and colleague, Mr. Justice Duvall. His urbanity, his courtesy, his gentle manners, his firm integrity and independence, and his sound judgment, so eloquently and truly stated at the Bar, are entirely concurred in by all of



us who had the pleasure of knowing him. His revolutionary services and patriotic acts belong to the general history of his country. For myself, having had the honor of an appointment to this Bench upon the same day that he received his, we were, during his whole judicial life for about a quarter of a century, contemporaries, although he was advanced in years far beyond myself. I can therefore bear my own testimony to the justice of the eulogium which has been pronounced at the Bar, upon his social and judicial qualities. They will long be cherished in our memories with grateful satisfaction. The Court, therefore, directs the resolutions of the Bar to be placed upon its records, and will now adjourn as a just tribute of respect to the deceased."

The explosion, mentioned in the next letter, was occasioned by the bursting of the great Paixan gun "Peacemaker," in the firing of a salute on board the steamer Princeton, as she was on a pleasure trip down the Potomac, having on board a large number of invited guests, among whom were many distinguished members of Congress.

TO MRS. JOSEPH STORY.

Washington, February 28th, 1844.

MY DEAR WIFE:

We have just heard of a dreadful accident by an explosion on board the steamer Princeton, on a visit to Mount Vernon to-day, with a select company on board. The Secretary of State, Mr. Upshur, the Secretary of the Navy, Mr. Gilmer, and four other gentlemen, strangers to me, are killed, and some ten or fifteen others injured and wounded. The Judges were all invited to take a like trip a day or two since, but we all declined, and none of our corps were on board.

. . . . .

I have not time to write more, but send this merely to say to you, that luckily none of the Judges were on board, and none of our friends were injured.

I am, most affectionately, yours,

JOSEPH STORY.

TO MRS. JOSEPH STORY.

Washington, March 3d, 1844.

MY DEAR WIFE :

. . . I wrote to you a few lines on the evening of the dreadful catastrophe which occurred on board the Princeton. I did so, lest you might have some apprehensions that some of the Judges might be on board. We had all been invited on her prior trip, and all declined on account of public duties. You will have heard all the melancholy details long before this reaches you, and, therefore, I shall not dwell upon them. The funeral of all the five dead took place yesterday from the President's house, and all the public officers of the Government, the members of both Houses of Congress, the Judges in their robes of office, the Foreign Ministers, and the officers of the Army and Navy in full dress, were present. The services consisted of reading a part of the church service over the dead, a portion of the Scriptures, and an oral address by an Episcopal clergyman of a good deal of eloquence and power, with but slight sprinklings of matters not in good taste. As a whole, it was better, perhaps, than any one I have heard in this city. We all assembled in the famous east room, the corpses lying before us; and in that very room, only the evening before the catastrophe, there was a public levee, and all the gentlemen attended in a gay and pleasant *conversazione* with their families. I need not, indeed I could not, describe to you the many painful thoughts that crowded upon me. But what struck me more than any thing was, among the mourners, two sons of Commodore Kennon, the one about ten, and the other about eight years of age; the former was bathed in tears all the

time, and his eyes, when he came into the room, were red with his past agonizing, burning tears. I have no heart to dwell farther on the scene, except to say that the procession reached nearly from the President's house to the Capitol Hill, a distance of more than a mile. It was a spectacle of curiosity more than of mourning, and, indeed, I was well satisfied, that all this "pomp of show, and pomp of woe," were as useless as they were heartless.

The great Girard case has been decided against the argument of Mr. Webster, by the unanimous opinion of all the Judges; a circumstance somewhat unexpected, as upon the former argument there was a considerable diversity of opinion among the Judges. It fell to my lot to deliver the opinion of the Court, which I would gladly have declined, if I well could, as it involved a great deal of labor and research, and the public expectation was high. I was indisposed to encounter so much effort, with reference to my health, which still continues good, and I am out of the scrape without any sensible diminution of it. I shall have much to say to you on this whole matter when I get home, as there are some secrets of private history in it, amusing and interesting. You know that I have ever been a sturdy defender of religious freedom of opinion, and I took no small pains to answer Mr. Webster's argument on this point, which went to cut down that freedom to a very narrow range. . . .

Truly and affectionately yours,

JOSEPH STORY.

The next letter acknowledges the dedication of the American edition of Vesey's Reports, edited by Charles Sumner, Esq.

TO CHARLES SUMNER, ESQ.

Cambridge, May 28th, 1844.

MY DEAR SIR:

I was entirely taken by surprise by your kind note of this morning, and the accompanying proof sheet. I need not say how truly gratifying it was to me to have the dedication of your edition of Vesey addressed to me. I had not dreamed of such a thing, and yet I scarcely know of any occurrence which could have given me more pleasure. I am rejoiced to have my name united with yours in this manner, so that the public may know how long and how intimate our friendship has been, and that we may swim down the stream of time together. You do not do justice to your undertaking when you deem it a secondary labor. The profession will, I am quite sure, estimate it very differently, and place you among those who have lightened the research of the learned, and illustrated the intricate paths of jurisprudence. Next to a good reporter, I hold a good annotator. What were Saunders now worth, but for Williams's notes? What were Coke and Littleton, but for Hargrave and Butler? Depend upon my word, you will greatly add to your reputation as a lawyer, and your business as a counsellor, by this effort, requiring at once diligence, sagacity, accuracy and clearness, qualities rather rare, even in this prolific age.

I say to you, God speed you and give you a good deliverance from so weighty a task.

I am most truly and affectionately, your obliged friend.

JOSEPH STORY.

The dedication was as follows :

TO THE  
HONORABLE JOSEPH STORY,  
ONE OF  
THE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES,  
IN TESTIMONY  
OF GRATITUDE FOR HIS FRIENDSHIP,  
AND OF ADMIRATION FOR HIS CHARACTER,  
THIS AMERICAN EDITION OF REPORTS,  
IN A DEPARTMENT OF JURISPRUDENCE WHICH HE HAS ILLUSTRATED  
BY HIS GENIUS AND LEARNING,  
IS AFFECTIONATELY INSCRIBED,  
BY  
CHARLES SUMNER.

Among the cases reported in the second volume of Story's Reports, which was published during this year, was the very interesting one of *Folsom v. Marsh*, in which the question arose, whether the letters of Washington were a subject of copyright. The following doctrine as to the property of persons in letters written by them, for the first time clearly laid down in this judgment, will be interesting to all readers, or at least to all writers.

"As to the supposed distinction between letters of business or of a mere private or domestic character, and letters, which, from their character and contents, are to be treated as literary compositions, I am not prepared to admit its soundness or propriety. It is extremely difficult to say what letters are or are not literary compositions. In one sense all letters are literary, for they consist of the thoughts and language of the writer reduced to written characters, and show his style and his mode of constructing sentences, and his habits of composition. Many letters of business also embrace critical remarks and expressions of opinion on various subjects, moral,

religious, political and literary. What is to be done in such cases? Even in compositions confessedly literary, the author may not intend, nay, often does not intend them for publication; and yet no one on that account doubts his right of property therein, as a subject of value to himself and to his posterity. If subsequently published by his representatives, would they not have a copyright therein? It is highly probable, that neither Lord Chesterfield, nor Lord Orford, nor the poet Gray, nor Cowper, nor Lady Russell, nor Lady Montague, ever intended their letters for publication as literary compositions, although they abound with striking remarks and elegant sketches, and sometimes with the most profound, as well as affecting exhibitions of close reflection, and various knowledge and experience, mixed up with matters of business, personal anecdote, and family gossip.

“There is no small confusion in the books, in reference to the question of copyright in letters. Some of the *dicta* seem to suppose that no copyright can exist, except in letters which are professedly literary; while others again recognize a much more enlarged and liberal doctrine. Without attempting to reconcile, or even to comment upon the language of the authorities on this head, I wish to state, what I conceive to be the true doctrine upon the whole subject. In the first place, I hold, that the author of any letter or letters, (and his representatives,) whether they are literary compositions, or familiar letters, or letters of business, possess the sole and exclusive copyright therein; and that no persons, neither those to whom they are addressed, nor other persons, have any right or authority to publish the same upon their own account, or for their own benefit. But, consistently with this right, the persons to whom they are addressed, may have, nay, must by implication possess, the right to publish any letter or letters addressed to them, upon such occasions, as require, or justify the publication or public use of them; but this right is strictly limited to such occasions. Thus, a person may justifiably use and publish, in a suit at law or in equity, such letter or

letters as are necessary and proper, to establish his right to maintain the suit or defend the same. So, if he be aspersed or misrepresented by the writer, or accused of improper conduct in a public manner, he may publish such parts of such letter or letters, but no more, as may be necessary to vindicate his character and reputation, or free him from unjust obloquy and reproach. If he attempt to publish such letter or letters on other occasions, not justifiable, a Court of Equity will prevent the publication by an injunction, as a breach of private confidence or contract, or of the rights of the author; and *a fortiori*, if he attempt to publish them for profit; for then it is not a mere breach of confidence or contract, but it is a violation of the exclusive copyright of the writer. In short, the person to whom letters are addressed, has but a limited right, or special property, (if I may so call it,) in such letters, as a trustee, or bailee, for particular purposes, either of information or of protection, or of support of his own rights and character. The general property, and the general rights incident to property, belong to the writer, whether the letters are literary compositions, or familiar letters, or details of facts, or letters of business. The general property in the manuscripts remains with the writer and his representatives, as well as the general copyright. *A fortiori*, third persons, standing in no privity with either party, are not entitled to publish them, to subserve their own private purposes of interest, or curiosity, or passion. If the case of *Percival v. Phipps*, (2 Ves. and Beam. 21, 28,) before the then Vice-Chancellor, (Sir Thomas Plumer,) contains a different doctrine, all I can say is, that I do not accede to its authority; and I fall back upon the more intelligible and reasonable doctrine of Lord Hardwicke, in *Pope v. Curl*, (2 Atk. R. 342,) and Lord Apsley, in the case of *Thompson v. Stanhope*, (Amb. R. 737,) and of Lord Keeper Henley, in the case of *The Duke of Queensbury v. Shelburne*, (2 Eden, R. 329; 4 Burr. R. 2330,) which Lord Eldon has not scrupled to hold to be binding authorities upon the point in *Gee v. Pritchard* (2 Swanst. R. 403, 414, 415,

419, 426, 427.) But I do not understand, that Sir Thomas Plumer, did, in *Percival v. Phipps*, deny the right of property of the writer in his own letters; and so he was understood by Lord Eldon in *Gee v. Pritchard*; who, however, said that that case admitted of much remark.

“Indeed, if the doctrine were otherwise, that no person, or his representatives, could have a copyright in his own private or familiar letters, written to friends, upon interesting political, and other occasions, or containing details of facts and occurrences, passing before the writer, it would operate as a great discouragement upon the collection and preservation thereof; and the materials of history would become far more scanty than they otherwise would be. What descendant, or representative of the deceased author, would undertake to publish, at his own risk and expense, any such papers; and what editor would be willing to employ his own learning, and judgment, and researches, in illustrating such works, if, the moment they were successful, and possessed the substantial patronage of the public, a rival bookseller might republish them, either in the same, or in a cheaper form, and thus either share with him, or take from him the whole profits? It is the supposed exclusive copyright in such Writings, which now encourages the publication thereof, from time to time, after the author has passed to the grave. To this we owe, not merely the publication of the Writings of Washington, but of Franklin, and Jay, and Jefferson, and Madison, and other distinguished statesmen of our own country. It appears to me that the copyright act of 1831 (ch. 16, § 9) fully recognizes the doctrine for which I contend. It gives by implication to the author, or legal proprietor of any manuscript whatever, the sole right to print and publish the same, and expressly authorizes the Courts of Equity of the United States to grant injunctions to restrain the publication thereof, by any person or persons, without his consent.

“In respect to official letters, addressed to the government, or any of its departments, by public officers, so far as the right



of the government extends, from principles of public policy, to withhold them from publication, or to give them publicity, there may be a just ground of distinction. It may be doubtful, whether any public officer is at liberty to publish them, at least in the same age, when secrecy may be required by the public exigencies, without the sanction of the government. On the other hand, from the nature of the public service, or the character of the documents, embracing historical, military, or diplomatic information, it may be the right, and even the duty of the government, to give them publicity, even against the will of the writers. But this is an exception in favor of the government, and stands upon principles allied to, or nearly similar to, the rights of private individuals, to whom letters are addressed by their agents, to use them, and publish them, upon fit and justifiable occasions. But assuming the right of the government to publish such official letters and papers, under its own sanction, and for public purposes, I am not prepared to admit, that any private persons have a right to publish the same letters and papers, without the sanction of the government, for their own private profit and advantage. Recently the Duke of Wellington's despatches have (I believe) been published, by an able editor, with the consent of the noble Duke, and under the sanction of the government. It would be a strange thing to say, that a compilation involving so much expense, and so much labor to the editor, in collecting and arranging the materials, might be pirated and republished by another bookseller, perhaps to the ruin of the original publisher and editor. Before my mind arrives at such a conclusion, I must have clear and positive lights to guide my judgment, or to bind me in point of authority."

During this year the death of Mr. Justice Thompson and Mr. Justice Baldwin created two vacancies on the Bench of the Supreme Court. The appointment of a new Judge to fill the place of the former is alluded to in the following letter. .

TO HON. JAMES KENT.

Washington, March 2d, 1844.

MY DEAR SIR:

No one can conjecture whom we shall have as a Judge for the second Circuit. What the President will do, we cannot determine. I have my own wishes on the subject, strong and warm, but I have no hope that they will be gratified. I want an associate of the *highest* integrity, with youth and ambition enough to make him become a deep student in all the law, and with a spirit of love for the Constitution, and an independence to proclaim it, which shall make him superior to all popular clamors,—and these to be united with courtesy of manners and kindness of heart. These, I admit, are high qualities; but I think I could find them, and so could you, if either of us had the appointment.

Believe me, with my sincere respects to Mrs. Kent, most truly and affectionately

Your friend,

JOSEPH STORY.

It was during the year 1844 (the last of Mr. Tyler's administration) that the proposition for the annexation of Texas and the creation of a new Slave State, was brought forward by the President. No measure, since the Missouri Compromise, ever so deeply agitated the country. Involving, as it did, the questions not only of war and slavery, but of the constitutional powers of this government,—committing the country to a policy politically dangerous and adverse to liberty,—and by its direct extension of slave representation in Congress affecting all future legislation,—it naturally excited the public mind to the utmost. My father was opposed to

it on every ground; and during the discussion in Congress, he thus expresses his opinion in relation to it:—

TO HON. EZEKIEL BACON.

Cambridge, April 1st, 1844.

MY DEAR SIR:

Your last letter, addressed to me at Washington, did not reach me until after my return home; and the 8vo copy of your "lecture" reached me only the day before I left Washington. I am greatly obliged to you for both; and I have read your lecture with very high satisfaction, and think the tribute to Madison, Gallatin, and Pierpont, eminently just; of that to myself I can only say, that, gratifying as it is, I fear that the public will think that it is drawn with the pencil of too warm a friendship. . . .

The Texas question is, or at least ought to be, an absorbing one with all good men and true patriots. In my judgment the admission of Texas into the Union would be a grossly unconstitutional act; and I should not be surprised if it should lead to a dissolution of the Union. It will forever give the South a most mischievous, if not a ruinous preponderance in the Union. And yet the non-slaveholding States seem to be utterly unaware of, or indifferent to the dangers. Party is the curse of our country, and will probably be the destruction of our liberties, as it was of the old Republics. . . .

Affectionately yours,

JOSEPH STORY.

The lecture alluded to in the preceding letter was delivered before the Young Men's Association in the city of Utica, New York. It contained pleasant sketches of the life and character of James Madison, Albert Gallatin, Joseph Story, and John Pierpont.

The following extract from an address before the Phi

Beta Kappa Society of Harvard University, by Charles Sumner, Esq., entitled "the Scholar, the Jurist, the Artist, the Philanthropist," is expressive of my father's opinions on this subject. In speaking of the views on slavery entertained by Rev. Dr. Channing, Mr. Sumner says, that among the publications of that distinguished philanthropist, towards the close of his life, was "a prophetic letter, addressed to Henry Clay, against the annexation of Texas, on the ground that it would entail upon the country war with Mexico, and would extend and fortify slavery. It is important to mention that this letter, before its publication, was read to his classmate Story, who listened to it with admiration and assent; so that the jurist and the philanthropist here joined in upholding benign truth."

The destruction of a church by a mob in Philadelphia, as well as the outrageous attack on the Ursuline Convent, at Charlestown, (near Boston,) is thus spoken of in a letter to Mr. Peters:—

TO RICHARD PETERS, ESQ.

Cambridge, July 6th, 1844.

MY DEAR SIR:

. . . I do not speak now of the shocking riots in your good city. Last winter I could deal in a little raillery on the subject. But it has now assumed too serious an aspect not to be seriously and thoughtfully considered. I mourn over such occurrences, not merely for the misery they bring with them, but for the proofs which they afford, that religious bigotry and popular delusions are as triumphant in the mobs of republics, as of despotisms, without the means of suppressing them in the former which belong to the latter. What a spectacle for a people boasting of their intelligence,

their patriotism, their freedom, and above all of their justice. *Proh pudor!* whether the mob destroys a convent at Boston or a church at Philadelphia. . . .

Believe me, most affectionately,

Your friend,

JOSEPH STORY.

The judicial and professorial duties of this year were unusually laborious. The Law School now numbered one hundred and fifty-four members and occupied a great portion of his time; and the dockets on his circuits were crowded with important and difficult cases, on which in the endeavor to satisfy the urgent wishes of counsel he overworked himself and exhausted his energies. Among these may be mentioned that of *Jenkins v. Eldredge*, (3 Story, R. 182,) in which a parol trust was set up founded upon voluminous and contradictory evidence. To this single case my father devoted a great deal of time, patience, and study,—the fruits of which are to be found in his long and able judgment thereon, covering no less than sixty-eight printed pages. There is, perhaps, no one of his judicial opinions more luminous than this, or which better exhibits his skill in arranging and analyzing evidence, or his sagacity in winding through labyrinthine intricacies of detail with the silver thread of legal principles.

These exhausting labors, together with the untoward event of the Presidential election, which, contrary to his hopes and expectations, had resulted in the election of Mr. Polk, greatly depressed his spirits; and the letters of this period are despondent in their tone. A long and dangerous illness, with which I was most inopportunistly attacked, tended also to cast an additional gloom over

his mind, at a time, when all his energies were needed to support him against the pressure of his duties. This is alluded to in the following letter.

TO RICHARD PETERS, ESQ.

Cambridge, November 27th, 1844.

MY DEAR SIR:

I have just received your letter of the 25th. William has been unable to write you, from a severe typhus fever, of which he has been dangerously ill; indeed, for some days I despaired of him. He is now on the recovery, but still feeble and confined to his chamber. . . .

As to myself, I have been unable during William's severe illness to attend to any thing. It completely prostrated me. Since that time and before, I have been literally overwhelmed with judicial duties, and with burdens upon my shoulders not yet half removed, which I have all along feared would knock me up. I thank a good Providence that I am yet very well, though much fatigued and exhausted; and I hope that at Washington I shall have some repose; and if practicable I mean to abstain from all extra labor, nay to be very moderate and very quiet in all things about the Court. I have done my share of the work, and have earned my title to a little indulgence. . . .

Truly and affectionately, your friend,

JOSEPH STORY.

The Berkshire Jubilee, alluded to in the next letter, was a social reunion of those who had been born in Berkshire, and who united on this festival to interchange congratulations, and to revive the memories of their native county.

TO HON. EZEKIEL BACON.

Cambridge, September 28th, 1844.

MY DEAR SIR:

I received your kind letter of the programme of the Berkshire Jubilee a considerable time ago; and if I were not tired of repeating my excuses of most pressing engagements (I had almost said overwhelming) for my delay to answer it, I should state to you that the letter and the programme were not the less welcome to me, and that my silence is not to be construed into indifference. I should have been glad to see you at any time during the past season; at the same time, at your age and mine, I know how little we are able to indulge our wishes. We must look to the future with eyes passing the boundaries of time and seeking other scenes.

Altogether your Jubilee must have been glorious; and I daily feel more and more the value of such associations, which unite hearts long separated, and hands which have been long estranged. Age, if it brings its infirmities, brings also its blessings, and among those are the softened views which it takes of past political and other differences, and the gentle tenderness with which it seeks to bring together the happier associations of early years on our natal soil. I envy not the man who does not feel his soul warmed and elevated by, as well as yearning towards other men, from whom he has been separated for almost a half century. . . .

I have not time to write you more; we have one hundred and fifty-four students at the Law School this term, and my lectures to them, and my judicial duties crowd out almost all means of leisure to write to friends. . . .

Believe me, most truly and affectionately,

Your friend,

JOSEPH STORY.

In answer to a letter from Mr. Kennedy, the Principal of the Dublin Law Institute, asking my father's views

of the "method of instruction and study best calculated to elevate the standard of legal knowledge, and facilitate acquirement by the student," he thus writes:—

TO T. KENNEDY, ESQ.

Cambridge, near Boston, May 15th, 1844.

DEAR SIR:

The pamphlets which you so obligingly sent me, together with your letter, did not reach me as early as might have been expected, owing to my absence in attending the annual session of the Supreme Court at Washington; this is my apology for the apparent neglect, in my not having before returned my thanks for the favor you have done me.

I have read with great interest the papers respecting the Dublin Law Institute, which you have sent me. I have been long persuaded that a more scientific system of legal education, than that which has hitherto been pursued, is demanded by the wants of the age and the progress of jurisprudence. The old mode of solitary, unassisted studies in the Inns of Court, or in the dry and uninviting drudgery of an office, is utterly inadequate to lay a just foundation for accurate knowledge in the learning of the law. It is for the most part a waste of time and effort, at once discouraging and repulsive. It was, however, the system in which I was myself bred; and so thoroughly convinced was I of its worthlessness, that I then resolved, if I ever had students, I would pursue an opposite course. It was my earnest desire to assist in the establishment of another system, which induced me to accept my present professorship in Harvard University, thereby burdening myself with duties and labors, which otherwise I would gladly have declined.

The system pursued by my learned brother, Mr. Professor Greenleaf and myself, in our juridical instructions has had the most entire success. The Law Institution here has flourished far more than I ever dreamed it could in a country



like America, where the administration of law is not as with you concentrated in Dublin or in Westminster or Edinburgh, but spreads over the whole territory.

Our system of instruction is not founded upon written lectures, (which, I am persuaded, is a very inadequate mode,) but upon oral lectures connected with the daily studies of the students in the various works which they study, and in the lecture-room where they are all assembled in classes, and where they undergo a daily examination; and every lecture grows out of the very pages of the volume which they are then reading. In this way difficulties are cleared away, additional illustrations suggested, new questions propounded, and doubts raised, and occasionally authorities criticized, so that the instructor and the pupil move along *pari passu*, and the pupil is invited to state his doubts, and learns how to master his studies.

Whether the like system would answer as well with you, I am unable to say, but I can scarcely suppose that it could fail, and I may add, that our pupils are all satisfied with it, and make a progress in their studies, so cheering and so marked, that it will not be relinquished.

I should heartily rejoice to know that the Dublin Law Institute should have the highest success in achieving the same purposes. I am aware that any change is likely to meet with much opposition from those who are accustomed to the old system, partly from prejudice and partly from, what I am sorry to say that I fear is but too common in our profession, a disposition to resist innovation even when it is an improvement. If Parliament should aid your efforts, I should indulge higher hopes of your triumphant success.

For your kind and flattering personal remarks, I beg to return you my sincere acknowledgments. If I have done aught to advance the cause of jurisprudence it will be the most ample reward of my labors which I could wish.

Believe me, with the highest respect,

Truly your obliged friend and servant,

JOSEPH STORY.

## CHAPTER XIII.

### PROFESSORIAL AND JUDICIAL LIFE.

MY FATHER'S MODE OF LECTURING IN THE LAW SCHOOL — LECTURES ON WILLIAM PINKNEY AND CHIEF JUSTICE PARSONS — MEMORANDA OF ONE OF HIS LECTURES.

OF my father's Lectures in the Law School there are, unfortunately, almost no written traces. They were wholly extempore, and delivered without minutes ; and no record was ever made of them by himself. Generally the text-book furnished the theme of his discourse ; but occasionally a chance remark at the beginning of the hour would start a train of thought or reminiscence remotely connected with the subject, which he would pursue for the whole time allotted to the lecture, pouring forth his wealth of knowledge and experience in a stream of easy colloquial remark, now deepening into earnest thought and exposition, and now swelling into a noble flow of eloquence.

One occasion I well remember, during the time when I was a student at the school. It was the last lecture of the term, on the Constitution, and it was not probable that the whole class would ever again meet. As my father took his seat to commence the exercise, this fact seemed to strike his mind, and he began by alluding to it. Moved, as he proceeded, by the train of thought and feeling thus accidentally set in motion, he slid into a

glowing discourse upon the principles and objects of the Constitution ; the views of the great men of the Revolution, by whom it was drawn ; the position of our country ; the dangers to which it was exposed ; and the duty of every citizen to see that the republic sustained no detriment. He spoke, as he went on, of the hopes for freedom with which America was freighted ; of the anxious eyes that watched it in its progress ; of the voices that called from land to land to inquire of its welfare ; closing in an exhortation to the students to labor for the futherance of justice and free principles ; to expand, deepen, and liberalize the law ; to discard low and ambitious motives in the profession, and to seek in all their public acts to establish the foundations of right and truth. The hour flew by while we yet listened in silent attention to this touching, earnest, and eloquent discourse, and the clang of the bell broke it off at its culminating point. In returning home with him, I remarked how much I had been impressed with his remarks, and he answered : "I was entirely led away, and spoke without preparation. Indeed, I had not the slightest intention of saying a word of the kind when I entered the room."

At the close of the Summer Term of the Law School, in the year 1843, he was requested to lecture on the character of some of the distinguished lawyers with whom he had been acquainted. He acceded to this request ; and selected as the subject of his remarks William Pinkney and Chief Justice Parsons. These two lectures, which were very familiar in their character, were reported by a member of the senior class, and published in the Law Reporter. Deprived of the beaming

face, fluent delivery, and persuasive tones, that gave grace and point to every word, their chief charm is gone. The reports are mere sketches; but they afford a tolerable idea of the manner and matter of these lectures. They are as follows.

NOTES OF LECTURE ON WILLIAM PINKNEY.

William Pinkney acquired his profession with Judge Chase, of Baltimore. His early education was not extensive. What first brought him into general notice, and gave a complexion to his after life, was his appointment as one of the commissioners under the treaty of 1794 (I think) with England. In the exercise of his office, Lord Eldon, and other great English lawyers, argued before him — men of learning and acquirements far before what his could be — and it was the importance he attached to sustaining himself, that led him to study thoroughly the law upon all the subjects then before him. He was six years settling the claims arising under this treaty; and employed much of his leisure in attendance upon the courts at Westminster; observing their manner of conducting business, their modes of argument and of speaking, in order to fit himself to compete with the first members of the bar in this country, on his return. His position, as American Commissioner, gave him a privilege, offered to but few of his countrymen, of frequenting the first circles, which were then filled with men of wit and learning. Mr. P. told me that at one of these parties, at which were Pitt, Fox, and other great scholars of the time, the conversation turned upon a passage in Euripides. The debate was carried on for a long time with a great deal of spirit — each side quoting many passages from Euripides and other Greek authors. “Of course,” says Mr. P., “I took no part in all this; and after a while, one of the disputants noticing that I took no part in the conversation, turned to me, saying, ‘Why, Mr. Pinkney, you don’t share in this talk,—come, sir, what

is your opinion of this passage?' I was obliged," said Mr. P., "to confess that I was listening to acquire information rather than impart any; but I resolved from that time to study the classics, and from that time I did."

When Mr. P. returned to this country, there was a great interest to hear him in public. Everybody wanted to know whether he was equal to his reputation. The Supreme Court was accordingly crowded with gentlemen and ladies, to witness his first performance in the Supreme Court of the United States. The personal appearance of Mr. P. was as polished as if he had been taken right from the drawer; his coat of the finest blue, was nicely brushed; his boots shone with the highest polish; his waistcoat, of perfect whiteness, glittered with gold buttons; he played in his hand with a light cane; in short, he seemed perfectly satisfied with himself, and walked through the court house with an air of ease and "*abandon*," arising from perfect self-confidence. The first cause he had to argue in the Supreme Court was rather an unfortunate one. It so happened that it was one of insurance, upon a cargo of animals which are not very proper to be dwelt on before a polite audience, especially of ladies. The insurance was upon a cargo of asses. Mr. P. never once expressed the name of those poor animals, but used a great deal of circumlocution, and was so vague in his expressions that it was impossible for the ladies to understand what kind of animals he was talking of; it was not probable that he was discoursing of angels,—further than that they could not guess. He attempted to introduce a little finery to please the ladies; though in fact the case did not well admit of it. He foamed at the mouth, and tore things all to tatters. The argument was very good, as an argument; but he evidently overdid. But, then, what could he do? There was the audience; they had come with expectation of hearing a specimen of fine speaking,—be the subject what it might,—and they must be gratified. He did not, on the whole, sustain himself on that occasion. Many of the lawyers would say,—“Why,

that is no better than some of us can do," and were evidently disappointed. Mr. Pinkney was exceedingly anxious to know how he had succeeded, and found out from his friends, before a great while, that his performance was considered as a failure,—not by what they said, but by what they did not say. He felt very much mortified and chagrined, and resolved to retrieve his reputation. His next cause was more favorable. He sustained himself admirably; and no one of the large audience who listened to him went away without being convinced that he was fully equal to his reputation.

Mr. Pinkney's style was ornate in the highest degree; very much like Lord Stowell's decisions in the Admiralty. He possessed a great fund of general information, and great good taste. He introduced into his arguments a great deal of figurative language, and would often indulge the pleasure of the audience by an interlude of twenty or thirty minutes, so nicely fitted in, that it would be impossible to find the beginning or end of it—though doubtless written out and studied beforehand, on purpose for the occasion. The interludes were always applicable to and grew out of the subject; and it was in these that he would launch out into that stream of eloquence which completely captivated and carried away all within his hearing. His voice was thick and guttural, and when wrought up to the paroxysms, in which he would sometimes indulge, was harsh and unpleasant. His excited manner was, no doubt, derived in part from the great English lawyers, who often indulged in that mode of speaking, which was not in accordance with the quiet customs of the American courts. He had listened to Erskine, Law, and all the great lawyers of the time, then practising in England, who must be supposed to excel those of this country, not only in legal attainments, but in classical studies, having been whipped into a familiarity with them from their earliest youth. He brought much of the spirit and learning of Westminster Hall with him; and did not content himself with arriving at distinction in one branch of the law, but mastered it in all its

parts. His method of argument was exceedingly clear and luminous; his very statement of a case was an argument in itself.

He always spoke for effect. He never for once lost sight of the fact that he was William Pinkney, and was speaking for fame. One of his faults was, that he was vain; and notwithstanding he prepared his arguments with great study and care, yet he wished it thought that his genius supplied him with whatever material he wanted. Indeed, he would never argue a cause without taking time for preparation. When he was not exactly ready he would get his case put off, under pretence of a headache, or something else, until he could be. He would sometimes sit up all night to be ready in a case, and if there was a great party or public meeting near, he would be sure to attend, and then study the residue of the night after his return home. Notwithstanding all this affectation, he was in reality a man of vast resources and most tenacious memory. He would often refer to a particular author, promising that he was not quite sure how the authority was; he had not read it for so long a time; but if he mistook not, the authority was so and so; and then he would go on and quote at length the language as set down in the book, trying all the while to produce the impression that it was from his early recollections he quoted, when, in fact, to a dead certainty, he had studied it out for that very occasion. I recollect he was once giving authority in this way, stating that such an author gave such an opinion, he believed, on such a page; the counsel on the other side denied there was any authority of the kind. Mr. Pinkney turned to him with the greatest vehemence, saying, "Hand me the book;" and then addressing the court: "Never in the course of my now not short juridical life have I attempted to mislead the court on a question of law; and certainly I would not attempt to mislead a court of such wisdom and learning as this; if I did, I should be sure of being, as I should deserve to be, exposed; and I hope I think too much of my reputation to

hazard it on such an artifice as that." Again turning to the counsel he repeated, "pass me the book." The book was accordingly passed to him; "and now," says Mr. P., "before I open the book, I will tell your honors the very page, and the part of the page on which the authority is, and let me, before I open it, repeat it to your honors," which he did. The authority was then read from the book, and corresponded, word for word, with his statement. Never after that time was it possible for the court to hear Pinkney on any subject, without feeling there was weight in what he said. In arguing questions, he would lay down the general principles of law on which he relied, saying, "Of course these principles are very familiar to your honors; but the points on which I rest my cause, I must confess, are not altogether so plain as these I have stated; nevertheless, I think they naturally result from them." He would then develop his argument with the greatest clearness and power. Indeed, Chief Justice Marshall said of Mr. Pinkney, that he never knew his equal as a reasoner—so clear and luminous was his method of argumentation. Judge Marshall then forgot himself, for I should make the same observation of him.

The reputation of Pinkney continued unabated through life; and whenever he was to speak, the court was usually crowded with gentlemen and ladies of taste and talents to hear him, and at the close of these interludes of which I have spoken, such was the transcendent power of his oratory, that the audience were transfixed to their places, and taking a long-drawn breath, they would say, almost involuntarily, "how beautiful!" I have said that Pinkney spoke for effect, for fame, for reputation. Never for a single moment did he lose sight of this—and to this over-anxiousness he sacrificed his life. I recollect his last argument before the Supreme Court. He was very much afflicted with a cold, producing such a hoarseness that it was with extreme difficulty he could go on. I saw the embarrassment under which he labored, and sent the clerk to him with a message from me, that he



had better cease speaking — that the court would adjourn for him. He sent this word back by the clerk: "Tell Judge Story that I am much obliged to him for the kind suggestion, but that I must go on; I have a reputation to maintain, I can't sacrifice that." He finished his argument, but such was the fatigue and exhaustion, brought on by this over-exertion, that he was obliged to take to his bed immediately, and survived but a few days. He died in the year 1822, at the age of 57. His place has not yet been occupied, and I think never can be, at least in my day.

NOTES OF LECTURE ON CHIEF JUSTICE PARSONS.

It is not my intention, gentlemen, to attempt any thing more than to give you a brief sketch of some lawyers of distinguished abilities and learning, with whom I have had the honor and satisfaction of being acquainted in the course of my not short juridical (as contradistinguished from my judicial) life. It will be most easy and proper for me to confine my observations to that portion of the lives of these remarkable men, which does not generally fall within the province of our stately biographies and histories. In this country we have, strictly speaking, no biographies, no memoirs, such as they have in France, showing us the private life and tastes and habits of our great men. We write eulogies, and dress them up in robes of state, as if it would not do to suffer the public to see them except at a distance, and on the stage where they act. True greatness appears to the best advantage when you view it nearest; and men of extraordinary minds and virtues have made the strongest impress on those who knew them most intimately. Such men are not the less great for their moments of relaxation and familiar intercourse, and it is by no means to their disadvantage to exhibit them sometimes "*dulce ridentem*," as well as "*dulce loquentem*."

I once attempted to induce a distinguished Solicitor-General, who had a very long and familiar acquaintance with

many lawyers of great reputation, to write their memoirs. He promised to do so, but his extensive business prevented the undertaking until late in life, and now the task will never be accomplished. Had he performed that labor, he would have produced one of the most useful and entertaining works that could be given to our profession.

Parsons was a man who belonged not to a generation, but to a century. The class of men of which he was a member, is an extremely small one. In his wonderful wisdom and vigor of mind, he bore a strong resemblance to Hamilton, with whom I had not the honor of being personally acquainted. Parsons was born in the year 1750, studied law with Judge Bradbury of Falmouth, (now Portland,) and opened an office at Newburyport. He was in full practice when I came to the bar, and even at that time a head and shoulders taller in intellect than any man, not merely there, but in the whole State. The fact that he had no equal, deprived him of opportunities for the exhibition of his prodigious abilities, and rendered unnecessary that extraordinary exertion, which is usually made by ambitious men to maintain a great reputation. His fame might and would have been much extended by rivalry. But there could have been no augmentation of his ardor and diligence in the pursuit of knowledge. He mastered whatever he directed his energies upon with the most surprising ease and rapidity. He loved the old law supremely. He studied it ardently and continually, and made himself thoroughly master of all its principles.

He was in the habit of writing dissertations on many disputed points of law, which most lawyers would consider of little importance, on account of their rare occurrence in practice. In the latter part of his life he told me this incident, and I think it important for you to remember. On some occasion, in the course of an argument, a difficult question of this nature unexpectedly arose. Parsons had formerly given it a thorough examination, and had written out, for his

own amusement and satisfaction, the result of his inquiries. His strong memory now supplied him with this information, and he proceeded to bring all his learning to bear upon the question. He opened on the Court with the whole of his vast power, clearing up what was obscure and dark, like a flash of lightening. The Court was amazed at so much legal erudition, and could scarcely conceive of a limit to the resources of a mind so well prepared for every emergency.

The person of the Chief Justice has frequently been well described. He was about five feet ten inches in height, somewhat corpulent, and of a heavy appearance. His forehead was high and smooth; he wore a reddish wig, (for he was bald at an early age,) which was rarely placed upon his head properly. His mind was well adjusted, his wig never. He generally wore a bandanna kerchief about his neck to protect it from cold winds. His eye was clear, sharp, keen, and deep set in his head; it looked you through and through. It seemed to me the embodiment of the eye of the law, piercing through you, and seeing and discovering every thing with astonishing penetration. It was a glance that few could bear to have steadily fixed upon them.

He was not very grave. He had an abundant and inexhaustible wit and pleasantry, which he delighted to exhibit on proper occasions. His repartees were surprisingly ready, appropriate, and, if he chose, severe. The young members of the bar used to gather around him, like the disciples of Socrates, to enjoy his pleasant and highly valuable instruction. A kind word from him (and he had many of them for young men) went deep into the heart, and was never forgotten. Parsons was not merely a lawyer. He read every thing. He was an excellent mathematician, and a good scholar in the classics. He was fond of novels, and, like Chief Justice Marshall, would spend the night over a romance, and the next day would read metaphysics with equal delight.

When at Salem, the bar usually met at dinner at the same table, but Parsons preferred a private house. He was shy, and did not willingly go into crowded company. But he frequently met us in the evening, and we had then an opportunity of enjoying his conversation. He touched upon every thing and left us equally astonished and delighted with his wisdom, learning, and wit. The last was brilliant, but never harsh, and it never reflected upon the conduct of others. While he kept us in a continual roar, we had no fear that the amusement would be at our expense—that the shaft would be aimed at us. It was bright and flashing, but it never scorched. He was retired in his habits; but if you met him at table, you would be so fascinated with his kindness and extraordinary powers of conversation, that you would take your leave with infinite reluctance. He loved the old law to the end of his life; and had a deep knowledge of the Year Books, which he advised me to read. I did so; and I once had occasion to use them before him. In the case which I argued, the authority of Chief Justice Hale was against me. I undertook to show that Hale was either misrepresented, or was wrong. When I stated my point, Parsons said to Mr. J. (the counsel against me)—“It is a bold thing to attack Lord Hale.” “It may be so,” I replied, “but I trust that I shall succeed in convincing your Honor that Hale is wrong.” I had translated about thirty cases from the Year Books. I shall never forget the delight with which Parsons listened to them. When I had finished, he said—“I believe brother Story is right: I will consider the matter more deeply.” I relate this incident to show the character of his learning, and his opinion of the necessity of drinking from the fountains of our old English law.

When he came upon the bench, there was in use in Massachusetts an action for the recovery of real property, which was neither the action of “ejectment” nor the old “writ of right.” He was the first to introduce into our practice the “writ of right,” and the whole body of the law incident to

it. Commercial law was little known in his day; but towards the close of his life it began to be studied. He mastered all that was then known about it, with the greatest rapidity. His opinion upon commercial questions was as highly valued as that of any lawyer of his time.

A gentleman once wrote him a letter, stating a case, requesting his opinion upon it, and enclosing twenty dollars. After the lapse of some time, receiving no answer, he wrote a second letter, informing him of his first communication. Parsons replied that he had received both letters, had examined the case, and formed his opinion, but some how or other it "stuck in his throat." The gentleman understood this hint, sent him one hundred dollars, and received the opinion. Twenty dollars for the legal opinion of Parsons! the greatest lawyer of his time!

No lawyer in Westminster Hall was superior to him, and had he lived in England, we should have seen him not only in the front rank of English lawyers, but Chief Justice of the Kingdom.

He had not the diversified attainments of Mansfield, and some other eminent men who might be mentioned; but his extraordinary abilities and ambition would soon have placed him foremost in the race. He had no eloquence; but he possessed what was infinitely beyond it—a capacity for reasoning that was overwhelming. He did not know what rhetoric was, in himself, though he could appreciate it in others. I do not believe, that in all his decisions, a single ambitious sentence can be found. His style in speaking was brief, choice, fluent, clear and irresistible. In addressing a jury, he never indulged in declamation—the greatest of all folly. He spoke quietly, and in a tone of ordinary conversation, generally placing one foot on a chair, and his hand on his knee.

I said he was brief. I never knew him speak more than an hour, rarely above half an hour; but what he said was like gold, bright, solid, and pure. It fell like a dead crushing

weight upon his adversary. He unfolded the difficulties of the law with the greatest clearness to a jury, and simplified the most intricate subjects. The characteristic of his style was strong common sense. He fixed his eye upon the foreman, and to him addressed his argument. I have seen this quiet, strong manner of speaking resist and overturn a torrent of eloquence from even powerful adversaries. It was like the flood of Niagara, deep, strong, overwhelming all opposition.

He was plain and simple in his manners, having nothing of the address of a polished gentleman; but there was never any thing rude or coarse, or in the least degree improper, in his appearance or conduct. He was fond of female society; and at Salem he often was invited by a gentleman to attend some experiments in natural philosophy—I think the subject was *Light*—where he was sure to meet a *coterie* of intelligent ladies. He was flattered by it extremely. He was the life of the party: he talked, and they listened, by degrees drawing their chairs nearer and nearer to him, while he kept them in continual amusement and delight. They would never leave him without exclaiming to each other—“was there ever a man so intelligent, pleasant, witty, and delightful as Mr. Parsons?”

He had uncommon presence of mind. Judge —— related to me this incident, which occurred at his table. A servant of his, by accident caught his hand in the wig of Mr. Parsons, and pulled it off, exposing his head, which was perfectly bald, and perhaps had not been seen by any person for many years. The company were in consternation, but nobody spoke a word. They were greatly relieved when Parsons quietly said—“John, give me that wig. Don’t you think I have a good head?”

He sometimes indulged his wit in Court. I have seen the jury, the bar, and the by-standers, in merriment at some quiet remark, which he often made to relieve the gravity that usually prevails in that tribunal.

He tried causes with great expedition, for he saw the true points in the case at a glance, and determined them without any unnecessary delay, though not without sufficient deliberation. Indeed, the complaint of counsel was, that the case was sent to the jury almost without argument. It was because his great mind saw through a question at once, and would not suffer the time of the Court to be consumed by useless arguments. Unfortunately for his State, he did not live long enough. He was appointed Chief Justice in 1806, and died in 1813. Had he sat upon the bench twenty years, he would have left behind him a reputation as great and extensive throughout the whole country, and to posterity, as it was in his own State, and among his contemporaries. He might have become the great Judge of the age. It could be said of him, as of Lord Eldon, "*toto vertice supra est.*" But he did much to settle the early law of Massachusetts, and his labors can never be forgotten. His fame cannot be lost, for his profound and extraordinary learning and sagacity, as exhibited in his judicial opinions, whenever they shall be examined, will show to distant ages the greatness of the man.

I take to myself no little pride and satisfaction for the fact, that it was owing to my efforts that Parsons was chosen to fill the important station which he held. I was a member of the Legislature, and being the only lawyer of my party in the "house," it fell to my lot to act a part much more important than would have happened under different circumstances. Parsons had been elected to the bench in 1806, but declined on account of the insufficiency of the salary, which was at that time only twelve hundred dollars, and his practice was worth about ten thousand dollars a year. He could not be expected to make so enormous a sacrifice. I moved to appoint a committee to consider the subject of salaries. A bill was accordingly brought in and passed, increasing the salary of the Chief Justice to two thousand five hundred dollars. I supported the bill warmly, and with all my power.

This salary was afterwards, at my instance, raised to thirty-five hundred dollars, where it now remains. This was done by a party wholly opposed to the Chief Justice in politics, but they looked only to the honor of the jurisprudence of the State. They conceived that it would be a disgraceful circumstance, if so much learning and ability were not placed in that situation where they could be exerted with so much utility and honor to the country. *Itaque cepi voluptatem tam ornatum virum tamque excellens ingenium fuisse in nostra republica.* Shall I add that he was a kind husband, a warm friend, an honest man—in a word, a Christian?

I have told you what he was. I will now tell you what he was not—a poet. He was struck with the genius of Robert Treat Paine, a poet who enjoyed reputation in his day not since attained by any American poet; (I dare say, gentlemen, you have heard of him, but scarcely have seen his works,) and, seeing that he was wasting his talents upon unworthy subjects, he persuaded him to study law in his office, being convinced that he would become an eminent lawyer. Paine accordingly became a student of the law with Parsons, and was treated by him with marked attention. He told me that Parsons one day produced some verses, and read them. “Were they good?” I immediately asked. (For you know I had a sort of inclination to be a poet myself; I wrote verses, but never aspired to the dignity of writing poetry.) Paine replied—“they had no poetical merit whatever, but I did not dare tell Parsons so.”

Such was Chief Justice Parsons. I had much to say of him, but I perceive the clock has struck. I selected him for your consideration, because his great talents and extraordinary worth are perhaps less known to you than the fame of many men of inferior merit and abilities. He left a deep impression on the men among whom he moved, and on the jurisprudence of the State in which he lived. His influence will not soon cease to be felt; nor will his name be soon forgotten. His vast learning, his power in argument,



his solid and over-matching understanding, placed him above all his contemporaries, and present a lofty eminence to the view of posterity.

*"Aspice ut insignis spoliis Marcellus opimis  
Ingreditur, victorque viros supereminet omnes."*

One of his pupils has preserved the following memoranda of views and expressions uttered by my father on the occasion of an extra lecture, which are interesting.

"The manner of Judge Story, when lecturing, was more that of an enthusiast than one who discharges a duty, and he often gave us more than was 'set down in the bills.' A favorite theme of his was the constitutional history of our country; in discussing which, were introduced numerous reminiscences of distinguished men, with the whole lives of whom Judge Story was intimately acquainted. Some of the views and reminiscences, uttered upon the occasion of an extra lecture, I noted in my memorandum book.

"He was bitterly opposed to the recklessness with which laws were made and repealed. He thought legislators should be continued in office many years, not only to give truth and force to what they said and did, by the weight of experience, but also to take care that antiquity and age were preserved to laws, so that the people might not retire to sleep under a set of old laws, well tried and digested, and then wake up under rulers as crude as the measures they adopt. Speaking once with an eminent gentleman from Tennessee, continued Judge Story, upon this subject, I asked him why his legislature did not meet every year, as did the majority of State legislatures. His reply was, that the laws might have at least a trial before they were repealed. And there was a word of correct sarcasm in the remark.

"The lamented jurist often expressed great admiration of Mr. Albert Gallatin, and quoted him frequently. Mr. Galla-

tin, when a member of Congress, in a conversation with me, said Judge Story remarked: 'We have plenty of eloquence upon the floor; ay, and too much. It is the hard-working committee-man who is needed. The man who rarely speaks, but can apply himself to hard, dry, and important statistical labor. Statistic figures are far weightier and more useful than figures of speech.' If this were true in Mr. Gallatin's public day, what is it now? And speaking of Mr. Gallatin, let me say he is a truly great statesman. I rank him side by side with Alexander Hamilton. They were both foreigners, and both entered this country at about the same period. Mr. Gallatin preserved a purity of character that is as valuable in a politician as it is rare. A man of great learning, he daily adds weight to his counsels, and glory to his name. As Mr. Jefferson's Secretary of the Treasury, and succeeding General Hamilton, although opposed to the latter in politics, to his honor and magnanimity be it said, he never displaced a single thing of his predecessor. He would not try to better that which was good. The epitaph on a certain man's tombstone was just. It reads: '*I was well, I would be better, and here I am.*' Mr. Gallatin in his office was energetic and able. And it was often the case, that the Committee of Ways and Means, in deciding upon measures brought before them by Mr. Gallatin, would lose themselves, and adjourn, in order to have their proposer help them out of their difficulty.

"Upon one occasion, Judge Story related the following anecdote of Fisher Ames, Samuel Dexter, and Chief Justice Marshall. Mr. Dexter was one of those men whom (as was said of Burke) if you should meet on a rainy day beneath a shed, you would at once distinguish as a great man. A few moments conversation with Mr. Dexter showed this; and I remember, that when I first met him, not knowing who he was, I stared in wonderment. And yet, his mind was rather of a brilliant shade, than a great one. Mr. Dexter was once in company with Fisher Ames and Chief Justice Marshall. The latter commenced a conversation, or rather an opinion (for

he was almost solus in the dialogue) which lasted some three hours. On breaking up, the two former commenced, on their way homeward, praising the depth and learning of their noble host. Said Ames, after a short talk, 'to confess the truth, Dexter, I have not understood a word of his argument for half an hour.' 'And I,' good humoredly rejoined Dexter, 'have been out of my depth for an hour and a half.'

"Judge Story thought the limitation of thirty years to the age required for eligibility of United States senators, was intended more for a minimum than a maximum; for, at the time the Constitution was adopted, great fear was entertained of young men. He is not yet fifty years old, was an argument, which completely knocked up a canvasser's pretensions. And, indeed, politics is a life which inspires enthusiasm, not requires it. There are brilliant exceptions, but exceptions never constitute a rule. See Pitt and Fox, who, at twenty-three, were by far the ablest men in Parliament. I know I go contrary to the judgment of many, when I pronounce William Pitt an incomparably greater man than his father, Lord Chatham, a man who was often strangely inconsistent. It is impossible for us to reconcile, with uniformity of opinion and conduct, attributes of all true statesmen, the fact, that he who pronounced that celebrated speech against the employment of Indian warfare, should file, in the British cabinet, a letter, in his own handwriting, advising the same, and countenancing it directly and palpably. But Fox was, at the same time, a melancholy example of the fate of most precocious statesmen. At forty-five, the age when most men are entering public life, he was worn down by the press and cares of professional employments, and died a premature old man.

"Remarked Judge Story, at another time: 'Chief Justice Marshall's great expression was, "it is admitted."' As he was a powerful reasoner, it was often remarked: 'once admit his premises and you are forced to his conclusions; therefore, deny every thing he says.' Said Daniel Webster to me once:

‘when Judge Marshall says, it is admitted, sir, I am preparing for a bomb to burst over my head, and demolish all my points.’

“ I once saw a book advertised, entitled, ‘New Views of the Constitution.’ I was startled! What right has a man to start *new* views upon it? Speculations upon our Government are dangerous, and should be discountenanced. And, upon this point, Edmund Burke has uttered a brief, but important truth: ‘Governments are practical things, not toys for speculatists to play with.’ Nevertheless, governments must often change, in conformity to the demands of the times. I have been in public life forty years, and have seen the Union change much. You may think you are at last settled! But no! *our laws are written upon the sands of time, and the winds of popular opinion gradually efface them; new layers are to be made, and your old writing renewed or changed.*

“ Was Tyler President or acting President at the demise of General Harrison? A nice question, gentlemen, and hard to solve. The question was debated in Cabinet meeting, but on Mr. Webster’s opinion, Tyler was addressed as President. On one occasion, when Chief Justice Taney was ill, I took his place as Chief Justice, and was thus addressed. At first I felt nervous, but soon becoming used to it, found it like public money to new members of Congress, ‘*not bad to take.*’ And this was probably the feeling with Mr. Tyler.

“ ‘Who commences first, to-day?’ inquired the Judge, one morning.

“ ‘Mr. — or myself; either you please,’ replied a senior member.

“ ‘Ah!’ replied the Judge, ‘either is a very good answer, except in the case where a justice in Ireland said to two men (one of whom was to be transported and the other executed) which of you is to be hanged?’ ”

One favorite anecdote which he used to relate to his classes, in commenting on the maxim, “*Qui facit per*

*alium facit per se*,” and which, I am sure, they will all remember, was of “my friend Jack Callender,” who used to say that this maxim did not hold in the case of a snow storm, for then, it was quite a different thing to face it *per alium*, than to face it *per se*.

## CHAPTER XIII.

### PROFESSORIAL AND JUDICIAL LIFE.

CASE OF EX PARTE CHRISTY—LETTERS ON THE ANNEXATION OF TEXAS—REPORT OF MASSACHUSETTS ON THE EXPULSION OF MR. HOAR FROM SOUTH CAROLINA—LETTER ON THE RHODE ISLAND CONTROVERSY—DICKENS'S CHRISTMAS CHIMES—DEATH OF JUDGE PRESCOTT—LETTER OF JUDGE PRESCOTT—PROPOSES TO RESIGN HIS SEAT ON THE BENCH—REASONS—LETTERS RELATING TO IT—LETTER WRITTEN ON THE RESIGNATION OF HON. JOSIAH QUINCY AS PRESIDENT OF HARVARD UNIVERSITY—DONATIONS OF MY FATHER TO THE UNIVERSITY—EXTRACT FROM A REPORT ON THE LAW SCHOOL AND HIS DONATIONS, BY CHARLES SUMNER, ESQ.—PROPOSITION TO ERECT HIS STATUE BY THE MERCHANTS OF BOSTON—SUBSTITUTION BY MY FATHER OF A PROFESSORSHIP OF COMMERCIAL LAW.

THE winter found my father again at Washington in attendance upon the Supreme Court, and the following letter gives an account of the case of *Ex parte Christy*, (3 Howard's R. 292,) decided at this term.

TO WILLIAM W. STORY, ESQ.

Washington, January 1st, 1845.

DEAR WILLIAM:

I wish you and Emelyn and Edith a happy new year, this being the first day, and a holiday it has been to us all in this city. Both Houses of Congress and the Court adjourned over until to-morrow, and thousands crowded to the "White House" to pay their respects to the President, and to gaze at each other and exchange there and elsewhere mutual con-

gratulations. It is here somewhat like new year's day in New York, a day for fun and frolic, and conviviality, but it wants the spirit and vivacity which give it a peculiar relish there.

We are going on in the Court slowly, but steadily. We have one hundred and fifty cases, all of which are for argument, and after one month we find ourselves just at No. 29. You may judge, therefore, that we are not likely to make a decisive impression upon the docket. Yesterday I delivered the opinion of the Court in a great Bankrupt case from New Orleans, embracing the question of the nature and extent of the jurisdiction of the District Court in matters of bankruptcy. It was an elaborate review of the whole statute, and we sustained the jurisdiction of the District Court over all matters whatsoever, and recognized (as indeed was one of the points) the right of the Court to grant an injunction to proceedings and suits in the State courts. The opinion covers the whole ground in *Ex parte Foster*, and also in the New Hampshire cases which have been so stoutly contested in the State courts. . . . I took great pains about it, and the Court fully confirmed all my views. Judge Catron alone dissented.

Very truly and affectionately yours,

JOSEPH STORY.

During this session, the annexation of Texas was debated and carried in Congress. While the question was yet pending, a Convention was held in Massachusetts to consider what action should be taken upon it, which was attended by a large number of the most able men in the State. After two days' earnest discussion, in the course of which many eloquent and vigorous speeches were made, an address to Congress drawn up with great ability, and in which the hand of Mr. Webster was

plainly visible, was unanimously passed by the Convention. In this address the annexation of Texas is protested against as a violation of the Constitution of the United States, and a new sanction to the extension and perpetuation of slavery. In these proceedings my father was deeply interested, and his thorough approval of the grounds taken by this Convention will appear in the following letters. His judicial position alone prevented him from taking an active part in opposition to the measure. He considered it to be a violation of the whole spirit of the Constitution as well as its express provisions ; as calculated to carry the slave-holding power to an extent never contemplated in the establishment of this government ; and as an attempt to enlarge an enormous evil, which was as unjustifiable in policy as in morals.

TO WILLIAM W. STORY, ESQ.

Washington, January 25th, 1845.

DEAR WILLIAM:

The vote on the Texas question will probably be put to-day, and I entertain little doubt that in some shape it will pass. As usual the Northern and Middle States will be divided ; the South will unite. Pray, do not ask me how all these things are brought about. I should blush to put on paper what my belief is. There are ample means to accomplish any ends in power and patronage, "&c. &c. &c." and Lord Coke has told us that, "&c. &c." are signs full of meaning in the law. I think they have a still more pregnant meaning out of the law.

This government is becoming daily more and more corrupt ; and the decline and fall of the American Republic will not be less a matter of history in an age or two at farthest, than that of other republics whose fate is recorded in past



annals. However, the present crisis will soon be forgotten and forgiven by the people ; and we shall go on as we may, until by some convulsion we come to a full stop. When that will be I pretend not to prophesy ; you may live to be a witness of it.

I am glad of your renewed health. You must take good care and cherish it, for sad experience has taught me, that if it is once fairly lost it can scarcely be fully regained. *Nulla vestigia retrorsum*, is the motto on many overworked constitutions and brains.

We are going on quietly in the Court, with very few causes of any real permanent interest. But there are some worth talking about, when we meet. I think that the Court will adjourn about the beginning of March ; and when they do, I shall bid farewell to Washington with a light and buoyant spirit. . . .

Give my love to Emelyn and Edith, and to Mary also, when you see her. I suppose that she is too intent on her household affairs to find time to write me.

Yours, most affectionately,

JOSEPH STORY.

TO SIMON GREENLEAF, ESQ.

Washington, January 4th, 1845.

MY DEAR SIR :

I have been not a little vexed with the division among the Whigs in Boston. It argues ill for our future prospects, and I could ill afford at this moment to have our strength impaired, or union broken. I sympathized sincerely with the Native Americans in their first movements, because foreign influences have become most mischievous among us ; but I am now persuaded that the party have ulterior views, and feeling their strength, are determined to use it, *per fas aut nefas*, for their own ambitious, if not sectarian purposes.

The Texas question is now before Congress. Opinions

change every day, as to whether it will be annexed or not. One day it is said it will be, the next that it will not. My belief is, that the whole Democratic party will ultimately go for it, so unscrupulous and reckless, and disciplined for party action it is, and will continue to be. In the Senate, the question is doubtful, but it depends upon one or two votes; and what hope can be placed upon them, with such various influences, of which I will not speak, to bear upon them? If Texas is annexed, as I believe it will be, we owe it to the Abolitionists, and to the miserable time-servers in the North, who fawn and crouch to the South, and love whatever crumbs fall from their table. . . .

Give my kindest regards to Mrs. G. and believe me truly,

Yours,

JOSEPH STORY.

TO HON. STEPHEN C. PHILLIPS.

Washington, February 5th, 1845.

MY DEAR SIR:

I have but a moment to write you to say, that I have read in the last newspaper which reached us from Boston, the Address to the people of the United States by the late State Convention. I think it a very masterly composition, and written in the right tone and spirit, becoming our ancient Commonwealth and our political principles. I hope it will be printed in a pamphlet form, so that it may circulate freely and be capable of preservation. . . .

Believe me, truly and respectfully,

Your obliged friend,

JOSEPH STORY.

TO MRS. JOSEPH STORY.

Washington, February 9th, 1845.

MY DEAR WIFE:

. . . What could be more disgraceful than the rejoicings in Boston on the vote for Texas in the House of

Representatives? It is said that Nero fiddled while Rome was on fire, and Massachusetts men now in like manner rejoice when their own State is to be reduced to perpetual bondage to the slave-holding States. All this is the work of office-holders and office-seekers, and corrupt demagogues.

The address of the Massachusetts Convention is certainly a very able and striking composition. I wish it had elaborated one view, that is, that it enlarges as well as perpetuates the inequality of the representation in the House of Representatives, giving in effect to the holder of five hundred slaves, a vote equal to that of three hundred freemen. Such it is in reality, although not in form. We hug the chains which we are assisting to form for ourselves. . . .

I am as ever, affectionately yours,

JOSEPH STORY.

TO HON. SIMON GREENLEAF.

Washington, February, 16th, 1845.

MY DEAR SIR:

I have been intending to write you for a week or two last past, but my occupations have been so incessant in writing opinions, or attending conferences when not in Court, that I was almost precluded from the opportunity. And for the last four days I have been suffering under a very severe cold and catarrh, which has almost disabled me from attending to any thing, and has confined me to my chamber. I am getting better, but it is a slow process.

Your information as to the closing moot-courts interested me a good deal. You decided the *pro rata* freight case exactly as I should have done, and it coincides with a very late one in England. I think also you decided the paraphernal case entirely right. It is a curious case of the conflict of laws. But where are such conflicts to end? They spring up on every side, in the most extraordinary manner. We have decided one this very term of great interest, and I shall

bring it home for the moot-courts. I have laid aside a number for the moot-courts, some of which are curious.

The Senate are just now in the midst of the Texas debate. The papers will tell you who have spoken, and on which side. It is astonishing how easily men satisfy themselves that the Constitution is exactly what they wish it to be. They can expand or contract it at pleasure. To-day they are strict constructionists; to-morrow the most latitudinous powers spring up anywhere and everywhere. To me the question whether Congress could admit Texas has seemed to admit of a doubt. I have all along doubted,—that is not strong enough,—I have all along disbelieved that the treaty-making power extended to such a case. Could the treaty-making power surrender the United States to a foreign power? If not, how does it get the power to unite a foreign State with us? Is there any substantial difference between our joining them and their joining us? The fact is, that the framers of the Constitution never dreamed of such extravagances, and therefore they never provided in terms against them. The whole scope of the Constitution seems to be, not merely in terms, but in spirit and objects, the other way. There seem to me some things that I cannot argue. They are too plain for it. I have read Mr. Bell's Report on the Texas question with a good deal of pleasure. I thought I could see Mr. Mason's finger in parts of it. Am I right? The declaration report on the South Carolina conduct may be well enough, but it does not satisfy me. I wished it to be full of dignity, but full of spirit; I find it somewhat too cold, and too courtly. Yet, I do not know what I should propose as a substitute. Considering our position as a commercial State, it is a very difficult and delicate matter. I am better pleased with the address of the late Convention in Boston, written, I suppose, by Mr. Webster. . . .

I feel tired, so I bid you "good night," with my kindest regards to Mrs. Greenleaf.

I am, most truly and affectionately yours,

JOSEPH STORY.

The Declaration Report, alluded to in this last letter, was made by the Legislature of Massachusetts, on the occasion of the expulsion of Honorable Mr. Hoar from Charleston, where he had been officially sent by the Commonwealth as a commissioner to examine into the operation of a certain law of South Carolina, by which all colored sailors arriving at the port of Charleston were prohibited from entering the city, were subjected to imprisonment during the stay of their vessel, and rendered liable to be sold into slavery, in case their jail fees were not paid. This law, although it had already been pronounced unconstitutional by the Circuit Court of the United States, sitting in Charleston, and so certified to the Executive at Washington, still continued in force, and the mission of Mr. Hoar was to inquire into the operation of this law, and test its constitutionality, by bringing it to issue in a formal trial in the Courts of South Carolina. A body of citizens, however, waited on him, and, announcing that he could not be permitted to inquire into that matter, counselled him to leave the city. Finding Mr. Hoar resolute, they finally removed him by force from the State. The Massachusetts Legislature put forth their views on this outrage in a document, in the nature of a Declaration, which was drawn up by Honorable Charles Francis Adams.

A Report to the House of Representatives on the Rhode Island Controversy having been made, in which aspersions were cast upon certain parties in that State, Judge Pitman wrote to consult my father as to the best course to pursue. The following is an extract from his answer : —

TO HON. JUDGE PITMAN.

Washington, January 14th, 1845.

MY DEAR SIR :

. . . My opinion is that it is the solemn duty of the Legislature of Rhode Island to take this whole matter into its own hands ; to repel the imputations cast upon her in the report of the Committee of the House and elsewhere, and to vindicate the character of yourself and her other citizens, who have stood by her in her days of peril and distress. The State owes it to itself, and to the whole country, to come out, and make a bold resistance to the attempt on the part of the House of Representatives to cast unjust reproaches upon her, and to trample upon her rights as an independent sovereignty. This should be done in a full and elaborate report of all the facts and circumstances, and a full exposure of the objects of all the demagogues, in and out of Rhode Island, to involve you in a civil war ; to break down your form of Republican government. The report should be drawn up by your ablest men, and express with dignity, and at the same time with a determined and fearless spirit, your wrongs and your rights, State as well as individual. If Rhode Island, from a timid, or time-serving, or money-making policy, will not do this, the State has no reason to complain that facts are distorted, or her character unjustly aspersed. If, on the contrary, such a report should be published and extensively circulated by yourselves, and laid before Congress, I doubt not that Congress would order a large edition to be published for the use of the nation. If your State will not do this, then it seems to me that your own course should be to do nothing, as a personal vindication, and to leave it to time and your country.

Such are my own thoughts on this subject, in answer to your requests. Indeed, I cannot personally advise you to memorialize Congress.

Believe me, most truly and affectionately yours,

JOSEPH STORY.

Notwithstanding his various occupations, my father did not neglect the current literature of the day. Scarcely a book of note appeared that he did not acquaint himself with its contents; and he never failed to read with delight every new production of Mr. Dickens's pen. The following letter alludes to "The Christmas Chimes" of that distinguished writer.

TO MRS. JOSEPH STORY.

Washington, February 13th, 1845.

MY DEAR WIFE:

. . . I have been reading Dickens's new Christmas Chimes, and have been, on the whole, well pleased with it. Some of the scenes are drawn with his usual power and vivid accuracy, and some, in the "Dream," are wonderfully wrought out. But what interests me most is the strong sympathy which he everywhere exhibits for the poor, the forlorn, and the wretched; and his stern contrasts between the cold selfishness and indifference of the rich, and of the so-called philosophic guardians of paupers, dressed in a brief authority, and the humble virtues of the humblest race of laborers. I think that what he says will strike deep into the common English mind. In truth, his whole tale is a terrible exhibition of the operation of the Poor Laws, as actually administered in England, and of the bitter sufferings and oppressions of the lower classes of society there. It is worth a volume of harangues in Parliament, it is so lifelike, and so touchingly true. . . .

It is now getting late, and I must close my letter, with a good-night, and may God bless you.

Most affectionately yours,

JOSEPH STORY.

In the next letter my father pays a tribute to his early friend, Judge Prescott; he also opens the subject of his

intended resignation of his seat on the Bench, and touches, with his accustomed tone, upon the annexation of Texas and the imbecility of Northern sentiment.

TO CHARLES SUMNER, ESQ.

Washington, January 4th, 1845.

MY DEAR SIR:

. . . Mr. Prescott's death, although I had long been prepared to expect the event, came upon me at last suddenly, and has cast me into a saddening and painful gloom. I had honored him so long and so sincerely, and had been accustomed to think of him so much as one of my most valued contemporaries, that I feel a void in the circle which I dare not hope to see filled. He had great qualities, and the thing most to be regretted is, that he has left nothing behind which will make his various learning, vigorous thought, and lofty bearing felt by posterity; so that one is compelled to say, in the language of lament,

"Feeble tradition is his memory's guard."

I am glad that Mr. Lawrence communicated to you my intention to resign; but I desire to have that intention kept as much a matter of secrecy and confidence as it can, until after my return home. I shall otherwise be harassed by solicitations here as well as elsewhere, which will be distressing to me; but which will not shake my resolution. Depend upon it, I can no longer hope to be useful in the station which I occupy for my country. Every day more and more admonishes me that it is time for me to withdraw from the public service. Personally, my position is not unpleasant in respect to my associations. But times are changed, and things are changed, and men are changed. It is my intention, if practicable, to retire at the end of March. But there are cases still pending before me, which have been partly argued, and which I ought, perhaps, in justice, to finish before



I quit. At all events I mean to resign before the end of June. I shall then fall back on my Professorship and its duties with new ardor, and shall devote the residue of my life, if spared health and strength, to the completion of my juridical works, and possibly I may undertake some work which I had not, previously to the present period, though would be within the compass of my leisure.

There is no news in this city. The debate on the subject of the annexation of Texas is now going on in the House of Representatives; various propositions have been made, and no inconsiderable diversity of opinion is known privately to exist upon the subject among the Democrats. Whether the project will succeed or not at this session, is held by many persons to be uncertain. For myself, I can only say that I have little doubt that it will pass the House, so unscrupulous are many of the "dough-faced" members, and so various are the influences which will be brought to bear upon them, some of which are too gross even to mention. As to the Senate, there is barely a hope that it may not pass that body. I say barely a hope, for it will turn upon the votes of one or two members who are considered very doubtful. You must not rely too much upon the newspaper writers on this subject; the truth is that the scene changes daily here, and no man can prophesy of the morrow, what will be done, or not done. The most disgraceful after all will be the votes of members from the Northern and Middle States. Without them the project cannot be carried; with them it is sure.

In every way which I look at the future, I can see little or no ground of hope for our country. We are rapidly on the decline. Corruption and profligacy, demagoguism and recklessness characterize the times, and I for one am unable to see where the thing is to end. You, as a young man, should cling to hope; I, as an old man, know that it is all in vain.

What think you of the conduct of South Carolina with respect to Mr. Hoar? I observe all the Boston newspapers

are silent, and no one seems to think that any thing is to be done. The subject deserves very calm, but at the same time very resolute deliberations and actions.

I have not now time to say more even if I had the heart (as I have not) to say more. Give my kindest regards to Mr. Hillard, and assure yourself that I am,

Most truly and affectionately yours,

JOSEPH STORY.

The warmth with which Mr. Prescott reciprocated the esteem and respect of my father, appears in the following letter to Mr. Sumner : —

TO CHARLES SUMNER, ESQ.

Boston, November 10th, 1840.

MY DEAR SIR :

I thank you for Lord Denman's letter, and the books. I am much pleased to see that Judge Story's legal opinions are duly appreciated by the Court, and his books by the profession in England. I believe him the greatest Jurist now living in either country. It must be gratifying to him to find his works, even on Equity Law, reprinted in England in so handsome a style, and without garbling. The publishers have even had the delicacy to preserve the dedication, so that the dedicatees will have the honor of being associated with him in that country, which I am sure they will feel a great pleasure and pride in.

I am, dear sir, very faithfully, yours,

WILLIAM PRESCOTT.

Upon the resignation of President Quincy, as head of the University, the following letter, written by my father, was addressed to him, in behalf of the Corporation : —

TO THE HON. JOSIAH QUINCY, LL. D.

Boston, March 29th, 1845.

DEAR SIR:

It is with the most sincere regret that we acknowledge the receipt of your letter of the 19th instant, announcing your resignation of the office of President of Harvard University. This event, so unexpected and painful to us personally, is still more to be lamented as a public loss. We are compelled, however, to admit that the motives which have influenced your decision are most honorable to yourself, and cannot fail to meet the approbation of all ingenuous minds. The period, also, chosen for the purpose, could not have been selected with a wiser regard to the welfare and interests of the University. At no time have there prevailed greater harmony and efficiency in all the departments of instruction and government of the various faculties, or more entire good order, liberal study, and correct deportment, on the part of the students.

As our official relations with you are about so soon to terminate, we avail ourselves of this occasion to express to you, officially and individually, our deep sense of the value and importance of your services to the University, our full testimony to the untiring zeal, activity, and fidelity, with which you have devoted yourself to its interests, and our grateful recollections of the enlightened aid and support which we have received from your counsels and coöperation in our arduous duties. Some of us can carry back these recollections to the commencement of your official career, and all of us have been witnesses of the uniform kindness and scrupulous conscientiousness with which you have performed all your duties. It is with no common feelings of gratification, that we are enabled to say, that under your administration of the concerns of the University, there has been a steady advancement of literature, learning, and science, within its walls, and that, to no former period of its history,

could we look back with more satisfaction for proofs of its having fulfilled the just expectations of its friends and the public. In sound scholarship, in earnest efforts to support the Christian revelation and Christian morals, and in a practical illustration of the constitutional rights and duties of religious freedom of opinion, we deem it no rashness to assert, that it is not at this moment behind the most favored Collegiate Institutions of our country. To this desirable state of things you have eminently contributed.

It is also a source of the purest pleasure to us, that, in our intercourse with you, personal as well as official, there never has been, for a single moment, any interruption to the most free and friendly interchange of thoughts. If any differences of opinion have arisen, they have been communicated and received with the most candid and cordial courtesy. No measures have been adopted, which have not been sanctioned by your approbation, and rarely without entire unanimity on the part of the corporation.

It is under such circumstances, that we are called upon to relinquish a connection with you, so confidential, so interesting, and so important to the best interests of the University. Grateful for your past most valuable services, we cannot close this communication, without expressing our earnest wishes that the residue of your days may be crowned with health and happiness, in the possession of that dignified repose, which you have so fairly earned, and those solaces, which belong to a life of incorruptible fidelity, virtue, and devotion to the good of mankind.

We have the honor to remain, with the highest respect,

Truly, your obliged friends,

(Signed)

JOSEPH STORY,  
LEMUEL SHAW,  
CHARLES G. LORING,  
JAMES WALKER,  
JOHN A. LOWELL,  
SAMUEL A. ELIOT.

It had for some time been the wish of my father to retire from the Bench of the Supreme Court, and to devote himself solely to the duties of his Professorship. But hitherto circumstances and the persuasion of friends had induced him to remain. With his associates on the Bench, his intercourse had been uniformly pleasant; but, although he did full justice to their talents and learning, the constitutional views entertained by the majority of the Court were in many essential points opposed to his own. He was often forced either to assume the attitude of dissent, which was peculiarly ungrateful to his nature, or by his silence to yield apparent adhesion to doctrines and principles of interpretation which were at variance with all his previous decisions, and in his opinion unsound. In this awkward position, he felt that he could neither do justice to himself, nor render essential service to his country, and that his best course would be to resign his situation.

Had it not been for the unfortunate death of General Harrison, by which Mr. Tyler was elevated to the Presidency, he would probably have retired from office during that administration. But Mr. Tyler's views and wishes were quite different from those of General Harrison, and from the party by which he was elected. And, as it was understood that he had expressly avowed that in case of a vacancy in the Supreme Court, "no one should be appointed who was of the school of Story and Kent," my father felt that a resignation during his administration would only subject the Court to the hazard of a party nomination, which might be good or bad, but in respect to which little reliance could be placed on Mr. Tyler.

As the close of Mr. Tyler's administration drew near,

he had been sanguinely looking forward to the election of Mr. Clay, as affording a fit occasion for his resignation, feeling assured that in the hands of that statesman, the nomination of his successor could only be governed by the worthiest of motives. His disappointment was, of course, very great when the result of the election in favor of Mr. Polk completely overturned all his plans. The question as to his course was again open ; and after long deliberation and at the earnest instance of his immediate family, he resolved definitively to resign. It was very evident to him and to his friends, that his health was breaking down under his excessive labors, and that he could not hope to continue his present course for the four additional years of the succeeding administration, without endangering his life. As far as concerned the appointment of his successor, a resignation within that period would be the same in its effects as if it were immediate.

He was now sixty-five years of age. For thirty-three years he had labored in his vocation as Judge, and its duties began to grow irksome to him. He desired the peace and quiet of home, and every recurring year quitted his family for the winter with more and more reluctance. The severe illness of the preceding year had warned him, that one or other of his occupations must be abandoned. To quit the Law School was out of the question. This institution he had built up, and it was the delight of his life. His duties there were pleasures which afforded him an agreeable and honorable occupation. To gather around him a circle of young men, into whose minds he might instil sound doctrines of law and equity, and whom he might dismiss into the world with high

principles and pure motives ; to employ his leisure in giving a permanent written form to the learning with which he had stored his mind, and thus to smooth the path of the student, and to recommend and establish the law, was a prospect which was constantly before him, to charm his imagination. Had he not amply earned the right to realize this dream, and to disburden himself of the official duties which now so heavily weighed upon him by a life devoted to his country ? Some were ambitious for him, some were anxious for the Constitution. But those who loved him best, most desired him to retire from public life, and to devote himself to those pursuits which had for him the greatest charm. Laurels enough were clustering round his brow, and there was no fear that while life remained energy would be wanting.

The following letters, in addition to that addressed to Mr. Sumner, written during the early part of this year, relate to his intended resignation.

TO REV. JOHN BRAZER.

Cambridge, April 2d, 1845.

MY DEAR SIR :

I dare say that you are surprised that I have not before replied to your letter. I have desired so to do, but the delay has been unavoidable, owing to a multitude of engagements which have crowded upon me since my return home, and among these the completion of the manuscript of a work almost through the press, which awaited my movements.

I will deal frankly with you. Ever since the close of the last Presidential election, I have determined to resign my office as a Judge of the Supreme Court, thinking that I could no longer, in the actual state of the country, be of any farther use there. The time of my resignation I had not positively

fixed on, and meant it to be before the close of the present year, and probably much earlier. In case of my resignation I intended to devote my whole future life to my Law Professorship, and in contemplation of this, the Corporation have held out to me as an inducement, a great increase of my salary. The arrangement is not yet concluded, but I trust will soon be so.

In the mean time, the resignation of President Quincy has come upon us all by entire surprise. I have heard that my name, among others, had been mentioned for the vacancy. I greatly prefer my Professorship, for many reasons ; and I do not desire the Presidency. Indeed, with its present irksome duties and details, I should not be willing, under any circumstances, to accept it, even if it should be (as I think it will not be) offered to me. There is but a single event in case of which I could be brought to consider such a proposition for a moment, and that is (which is not likely to occur) a great division of opinion as to another candidate, and a great change in the actual arrangement of the duties of the President, taking from him the miserable details of business, and enabling him to instruct the Senior class in some study suited to his tastes and pursuits. The latter is, in my judgment, most important, to bring him into pleasant associations with the scholars, and to enable him to possess an intimate knowledge of their relative standing and merits. I repeat it, I do not believe that this event is likely to occur ; and I mean not to utter a word on the subject, as I deem my Professorship far more agreeable and useful to me, and of quite as much importance and dignity.

The college is now in a critical situation in the opinion of the public, and I daily perceive that Orthodoxy is again pressing forward to achieve its long-cherished purpose, — the obtaining the mastery and rule of the University. The times call for energy, decision, and character, to sustain the college against these reiterated attacks, and a combined action of all its friends to repel them. A weak or vacillating President,



one who courted popular favor, or yielded to temporary popular clamor, would bring the college into discredit, and subdue the public confidence in it, to an extent ruinous to its permanent interests. And yet, whichever way I look, I find difficulties in selecting the man, and the very man.

I hope to have the pleasure of a free conversation with you long before any choice shall be made, which cannot probably be for months to come. . . .

Believe me,

Most truly and affectionately,

Your friend,

JOSEPH STORY.

TO HON. EZEKIEL BACON.

Cambridge, April 12th, 1845.

MY DEAR SIR:

You must not be surprised at my delays in answering your kind favors. But in truth, I cannot find time, consistently with my public duties, to answer half the letters I receive; and I am reluctantly compelled to postpone letters of friendship to letters of business, very much against my will.

In respect to myself, and my concerns, I wish to say a few words. If Mr. Clay had been elected, I had determined to resign my office as a Judge, and to give him the appointment of my successor. How sadly I was disappointed by the results of the late election I need not say. It compelled me to consider whether I ought to resign under Mr. Polk's administration, or to await events. After much reflection I came to the conclusion that I ought to resign at some time before the close of his administration; and I left the precise time for future consideration. Many reasons induced me to this conclusion, but a single one only need be mentioned. Although my personal position and intercourse with my brethren on the Bench has always been pleasant, yet I have been long

convinced that the doctrines and opinions of the "old Court" were daily losing ground, and especially those on great constitutional questions. New men and new opinions have succeeded. The doctrines of the Constitution, so vital to the country, which in former times received the support of the whole Court, no longer maintain their ascendancy. I am the last member now living, of the old Court, and I cannot consent to remain where I can no longer hope to see those doctrines recognized and enforced. For the future I must be in a dead minority of the Court, with the painful alternative of either expressing an open dissent from the opinions of the Court, or, by my silence, seeming to acquiesce in them. The former course would lead the public, as well as my brethren, to believe that I was determined, as far as I might, to diminish the just influence of the Court, and might subject me to the imputation of being, from motives of mortified ambition, or political hostility, earnest to excite popular prejudices against the Court. The latter course would subject me to the opposite imputation, of having either abandoned my old principles, or of having, in sluggish indolence, ceased to care what doctrines prevailed. Either alternative is equally disagreeable to me, and utterly repugnant to my past habits of life, and to my present feelings. I am persuaded that by remaining on the Bench I could accomplish no good, either for myself or for my country.

I meditate, therefore, to fall back on my Law Professorship, and to devote the residue of my life to its duties, hoping thereby to sustain its influence and its character. I believe the University will be ready to allow me any reasonable compensation I desire.

The Presidency of Harvard College is not an object within my contemplation. I should greatly prefer my Professorship, as not less in dignity, and quite as elevated in importance. The resignation of the President came upon me by entire surprise, and it is very uncertain who will be his successor. Months will elapse before any choice can or will be made,

and perhaps a half year. If Mr. Everett should, upon his return from Europe, incline to take it, it is not improbable, although far from certain, that it may be offered to him. I do not believe that sectarian views will have any influence upon the appointment. I shall remember your recommendation of President Hopkins.

My judicial and other duties will probably occupy me (with occasional journeys) until the beginning of September. If in that month you should have an opportunity to visit old Massachusetts, I shall be very glad to see you at Cambridge, and talk over old affairs and new.

Believe me, most truly and affectionately,

Your friend,

JOSEPH STORY.

Having determined to resign, my father returned to Cambridge after the session at Washington, with a light heart. This determination, however, he endeavored to keep private, disclosing it only to a few friends, with whom he consulted in respect to his future plans. Hitherto, his salary as Professor at Cambridge had only been one thousand dollars. Notwithstanding the large increase of the Law School (then numbering over one hundred and fifty students, whose tuition fees amounted to fifteen thousand dollars annually) the salary had never been raised. On the contrary, my father had declined the reiterated offers of the corporation, to increase it to any sum that he should deem proper.

As he was now, however, to resign his income as Judge of the Supreme Court, and to surrender all his time to the Law School, he did not feel that his circumstances would allow him to continue the course which he had previously adopted. This was at once apprehended by

the Corporation, who proposed an increase of compensation, offering him any sum which he should fix upon, rightly considering his services to the College as invaluable, and well knowing their ability, out of the revenue of the School, to meet any demand which he should make. The sum of four thousand dollars was ultimately established as his future annual salary.

The paltry compensation, which had been hitherto received from the College, was never looked upon by either party as constituting an adequate remuneration of his services; but, on the contrary, the express understanding had been, that the difference between it and the sum proposed to be paid by the Corporation, and declined by my father, was to be considered as an annual donation to the Law School. Taking the rate of three thousand dollars, which is the present salary of the Professors at the Law School, and the minimum sum at which my father's services can be estimated, his actual donations to the College, in money, during the sixteen years of his Professorship, after deducting the salary received by him, would amount to \$32,000, which is more than double the donation of Mr. Dane. Although this fact appears undoubtedly on the records of the University, yet, as it is not generally known, I feel bound thus publicly to state it, in order to vindicate my father from the supposition of having made no pecuniary donation to the College, as well as to explain a clause in his will, in which the fact is referred to. It is greatly to be regretted, that a paper drawn up by him in relation to this matter, and fully explaining it, has, by some unfortunate accident, been lost.

Out of the surplus income of the school during his Professorship, the entire Law Library was purchased,

(except what was selected from the general library of the University,) which, in the late Report of the Treasurer, was valued at \$32,493.87, and the whole cost of the enlargement of the Law building in 1845, amounting to \$12,700, was defrayed. Besides this, the difference between the income of the Royall fund, and the salaries actually paid to the Professors on that foundation, during this period, amounting to \$25,971, were also paid out of this revenue; and at my father's death \$15,500 remained to the credit of the school. The income of Mr. Dane's donation was not even sufficient to pay the trivial salary of \$1,000. The greater portion of this revenue, beyond the actual donations by my father, is fairly attributable to the influence of his name and efforts, and as no portion of the funds, or of the income from the funds of Mr. Dane, was appropriated either to the Law building or to the Library, it is difficult to see why he alone should have the honor of them.

In February, 1849, a committee was appointed by the Board of Overseers, consisting of Hon. Peleg Sprague, Hon. William Kent, Charles Sumner, Esq., Hon. Albert H. Nelson, and Peleg W. Chandler, Esq., to visit the Law School. The report of this committee on November 7th, 1849, drawn up by Charles Sumner, Esq., after stating the history and condition of the school, thus proceeds:—

“ In reviewing the history of the School, the committee, while remembering with grateful regard all its instructors, pause with veneration before the long and important labors of STORY. In the meridian of his fame as a judge, he became a practical teacher of jurisprudence, and lent to the University the lustre of his name. . . .

“ The character of his labors, and their influence upon the School, will appear from an interesting passage in his last will and testament, bearing date January 2, 1842. After bequeathing to the University several valuable pictures, busts, and books, he proceeds as follows : ‘ I ask the President and Fellows of Harvard College to accept them as memorials of my reverence and respect for that venerable institution at which I received my education. I hope it may not be improper for me here to add, that I have devoted myself as Dane Professor for the last thirteen years<sup>1</sup> to the labors and duties of instruction in the Law School, and have always performed equal duties and to an equal amount with my excellent colleagues, Mr. Professor Ashmun and Mr. Professor Greenleaf, in the Law School. When I came to Cambridge, and undertook the duties of my Professorship, there had not been a single law student there for the preceding year. There was no Law Library, but a few old and imperfect books being there. The students have since increased to a large number, and, for six years last past, have exceeded one hundred a year. The Law Library now contains about six thousand volumes, whose value cannot be deemed less than twenty-five thousand dollars. My own salary has constantly remained limited to one thousand dollars,—a little more than the interest of Mr. Dane’s donation. I have never asked or desired an increase thereof, as I was receiving a suitable salary as a Judge of the Supreme Court of the United States; while my colleagues have very properly received a much larger sum, and of late years more than double my own. Under these circumstances, I cannot but feel that I have contributed towards the advancement of the Law School a sum out of my earnings, which, with my moderate means, will be thought to absolve me from making, what otherwise I certainly should do, a pecuniary legacy to Harvard College, for the general advancement of literature and learning therein.’

<sup>1</sup> At the time of his death it was sixteen years.

“ It appears, from the books of the Treasurer, that the sums received from students in the Law School, during the sixteen years of his professorship, amounted to \$105,000. Of this sum, only \$47,200 were spent in salaries, and other current expenses of the School. The balance, amounting to \$57,200, is represented by the following items, viz.:

Books purchased for the Library and for students, including about \$1,950 for binding, and deducting the amount received for books sold . . . . .	\$29,000
For the enlargement of the Hall, containing the library and lecture-rooms, in 1844-45 . . . . .	12,700
The Fund remaining to the credit of the School in August, 1845	15,500
	<hr/>
	\$57,200

Thus it appears that the Law School, at the time of Professor Story's death, actually possessed, independent of the somewhat scanty donations of Mr. Royall and Mr. Dane, funds and other property, including a large library, and a commodious edifice, amounting to upwards of *fifty-seven thousand dollars*, all of which had been earned during Professor Story's term of service. As he declined, during all this time, to receive a larger annual salary than \$1,000, and as his high character and the attraction of his name doubtless contributed to swell the income of the School, it will be evident that a considerable portion of this large sum may justly be regarded as the fruit of his bountiful labors contributed to the University.

“ The committee, while calling attention to the extent of the pecuniary benefaction which the Law School has received from Professor Story, have felt it their duty to urge upon the Government of the University the propriety of recognizing this service in some suitable form. The name of Royall, attached to one of the professorships, keeps alive the memory of his early beneficence. The name of Dane, attached to the professorship on which Story taught, and sometimes to the edifice, containing the library and lecture-rooms, and also to

the Law School itself, attests, with triple academic voice, a well-rewarded donation. But the contributions of Royall and Dane combined—important as they have been, and justly worthy of honorable mention—do not equal what has been contributed by Story. At the present moment, Story must be regarded as the largest pecuniary benefactor of the Law School, and one of the largest pecuniary benefactors of the University. In this respect he stands before Hollis, Alford, Boylston, Hersey, Bowdoin, Erving, Eliot, Smith, M'Lean, Perkins, and Fisher. His contributions have this additional peculiarity, that they were munificently afforded,—from his daily earnings,—not after death, but during his own life; so that he became, as it were, the executor of his own will. In justice to the dead, as an example to the living, and in conformity with established usage, the University should enroll his name among its founders, and, in some fit manner, inscribe it upon the School which he has helped to rear.

“Three different courses have occurred to the committee. The edifice containing the library and lecture-rooms may be called after him, *Story Hall*. Or the branch of the University devoted to law may be called the *Story Law School*; as the other branch of the University devoted to science is called, in gratitude to a distinguished benefactor, *Lawrence Scientific School*. Or, still further, a new and permanent professorship in the Law School may be created, bearing his name.

“If the latter suggestion should find acceptance, the committee would recommend that the professorship be of *Commercial Law and the Law of Nations*. It is well known, that it was the earnest desire of Professor Story, often expressed, in view of the increasing means of the Law School, and of the necessity of meeting the increasing demands for education in the law, that professorships of both these branches should be established. He regarded that of commercial law as most needed. His own preëminence in this department is shown in his works, and especially in his numerous judicial opinions. And only a few days before his death, in conver-



sation with one of this committee, hearing that it had been proposed by some of the merchants of Boston, on his resignation of the seat which he had held on the Bench for thirty-four years, to cause his statue in marble to be erected, he said, 'If the merchants of Boston wish to do me honor in any way on my leaving the Bench, let it not be by a statue, but by founding in the Law School a professorship of commercial law.' With these generous words he embraced in his vows at once his favorite law, and his favorite University.

"The subject of commercial law is of great and growing practical importance. Every new tie of commerce, in the multiplying relations of mankind, gives new occasion for its application. Besides the general principles of the law of Contracts, it comprehends the law of Bailments, Agency, Partnership, Bills of Exchange, and Promissory Notes, Shipping and Insurance;—branches of inexpressible interest to the lawyer, the merchant, and, indeed, to every citizen. The main features of this law are common to all commercial nations: they are recognized with substantial uniformity, whether at Boston, London, or Calcutta; at Hamburg, Marseilles, or Leghorn. In this respect they may be regarded as a part of the *private* law of nations. They would be associated naturally with the Public Law of Nations; embracing, of course, the Law of Admiralty, and that other branch which, it is hoped, will remain for ever, a dead letter,—the Law of Prize.

"The committee believe that all who hear this statement will agree, that something ought to be done to commemorate the obligation of the University to one of its most eminent professors and largest pecuniary benefactors. They have ventured to make suggestions with regard to the manner in which this may be accomplished, not with any pertinacious confidence in their own views, but simply as a mode of opening the subject, and bringing it to your best attention. In dwelling on the propriety of creating a new and permanent professorship, they do not wish to be understood as expressing

a preference for this form of acknowledgment. It may well be a question, whether the services of Professor Story,—important in every respect,—shedding upon the Law School a lasting fame, and securing to it pecuniary competence, an extensive library, and a commodious hall,—can be commemorated with more appropriate academic honors, than by giving his name to that department of the University of which he has been the truest founder. The world, in advance of any formal action of the University, has already placed the Law School in the illumination of his name. It is by the name of STORY that this seat of legal education has become known wherever jurisprudence is cultivated as a science. By his name it has been crowned abroad.”

In furtherance of the wish expressed by my father, that the merchants, if they desired to honor his name, instead of erecting his statue, would found a Professorship of Commercial Law in the Law School, a project was at once put on foot to establish such a Professorship, to which my father’s name should be given, and which he should assume in place of the position then occupied by him. This scheme was so far matured as to leave little doubt that it would be carried into effect, so soon as his retirement from the Bench should leave him free. Nothing could have been more grateful in every respect than this project, whether he considered it as a tribute of honorable respect for his judicial services, from a class of men so truly esteemed by him, or as affording him a position, the duties of which were of all things most agreeable to his feelings.

## CHAPTER XIV.

### PROFESSORIAL AND JUDICIAL LIFE.

FESTIVAL ON THE ENLARGEMENT OF THE NEW BUILDING FOR THE LAW SCHOOL — HEALTH OF MY FATHER — HIS VIEWS AND FEELINGS AS TO HIS RESIGNATION — PUBLICATION OF COMMENTARIES ON PROMISSORY NOTES — LETTERS FROM PROFESSOR MITTERMAIER AND MR. BURGE — NOMINATION FOR THE PRESIDENCY — LETTER ON MR. SUMNER'S ORATION ON THE TRUE GRANDEUR OF NATIONS — CASES IN THE CIRCUIT COURT — LETTER RELATING TO HIS RESIGNATION — ILLNESS — DEATH — FUNERAL — RESOLUTIONS BY THE BAR OF THE SUPREME COURT, AND OF THE VARIOUS STATES — PORTRAITS.

THESE preliminaries being arranged, my father again devoted himself with renewed zeal to his professorial duties. On the third day of July, a festival was given, in celebration of the completion of two large wings, which it had been found necessary to add to the Law Building, in order to accommodate it to the increased number of students, and to afford a larger space for the library. In superintending the progress of these additions, my father took great interest, and, a few days before the celebration, he carried me, with other friends, over the rooms, pointing out their conveniences, and with great enthusiasm expatiating on the delightful days in store for him, little foreseeing that those dreams were never to be realized. The following letter refers to the festival : —

TO HON. JAMES KENT, LL. D.

Cambridge, June 10th, 1845.

MY DEAR SIR :

Sixteen years have elapsed since the Law School was re-organized, upon the accession of Mr. Quincy to the Presidency of Harvard College, and we have just completed a very large addition to the Dane Law College, for a library and a lecture-room. The law students have concluded to celebrate the occasion by a discourse, to be delivered by the Hon. Rufus Choate, and a public dinner in the new Library, at which, President Quincy, and other distinguished gentlemen, Judges and lawyers, will be present. Indeed, it is in some sort, a farewell dinner to President Quincy, whose resignation takes place at the ensuing commencement. We are all of us most anxious that you should be present with us on this most interesting occasion, probably the last great professional meeting of your life. At your age, we should not expect, or impose upon you the task of making a speech at the table, and we shall all understand, that if you will favor us with your company, you shall be exempted from any effort of this sort. Under these circumstances, we earnestly hope, that you will do us the honor to give your attendance, that you may witness the prosperity of the Law, in that School, where your Commentaries constitute one of the leading works of instruction, every year. Already, the Law School has numbered upwards of eleven hundred students, within the last sixteen years, and we have now about one hundred and forty at the School.

I shall be most happy to have you come and stay at my house in Cambridge, where you will be received with all welcome, and have a comfortable chamber, and quiet hours for your accommodation.

This is the last year I shall be a Judge of the Supreme Court, and in the early autumn, my resignation will be given in. Henceforth, I shall devote the residue of my life and

energies to the Law School exclusively. I wish you, however, not to give publicity to this fact at present, as I mean, at a suitable time, as soon as my summer Circuit is finished, and the business of it is despatched, to announce it publicly, under my own name, in the newspapers.

My work on "Promissory Notes" is nearly through the press, and will all be published in this month. . . .

The celebration will be on Wednesday, the 3d day of July.

Believe me, with the highest respect,

Truly and affectionately, yours,

JOSEPH STORY.

The address by Mr. Choate was a finished and eloquent discourse on the "Profession of the Law as an Element of Conservatism in the State." And after it was delivered the audience adjourned to the Library of the School, where they partook of a dinner. The occasion was one of great hilarity, and my father was in high spirits. He made a speech, in which he gave an interesting sketch of the foundation and growth of the Law School, and paid a deserved tribute to Mr. Dane. I never saw him in better health. He had entirely recovered from his illness. After passing that dangerous strait of life,—the grand climacteric,—he and his constitution seemed to have undergone a change which bade fair to insure him at least ten years more of strong health. The future now smiled upon him, and but a few difficult steps remained to be taken ere he should emancipate himself from all that could interrupt his happiness. The descending slope looked tempting and strewn with flowers. "All that should accompany old age, as honor, love, obedience, troops of friends," surrounded him. He enjoyed his well-earned fame. He

was the centre of a circle of friends who honored him and delighted in his genial powers. His warm heart, at peace with the world, was filled with kind affections and pure thoughts. The measure of his hopes was more than full. Home and the quiet of domestic life, were dearer to him than show and pomp, and while he sat within the sound of the College bells, and moved among the band of young men whose hearts were warm with the first glow of ambition, he was satisfied.

It was in the course of a conversation during the evening of Commencement day, on his return to his home, after the exercises were over, that he said to my mother, "I have been a lucky fellow. There are few persons whose life has been so happy as mine." "Has it really then been so happy?" asked my mother. "Yes, very happy," he answered, "very happy." "And yet we have met with great losses." "Think of the children we have lost," suggested she. "I remember them," he answered; "those sorrows were very sharp; but who can say what might have happened had they lived. I believe that God, in his good providence, has ordered all things aright. Besides, I have had great compensations for these griefs. My fame, and the praise that has been so kindly given to me, have been a great delight. What right had I to expect the prosperity and success that I have met with in life?"

So content was he with the past and the future, that the political gift which would have tempted the least ambitious, had for him no charms. And it having been suggested to him, in a conversation referring to his intended retirement from the Bench, that a strong wish had been expressed to see him a candidate for the high-

est political office of the country, he replied instantly, that "the station of President of the United States would not tempt him from the Professor's chair and the calm pursuits of jurisprudence.'

He was in fact at about this time nominated for the Presidency by some Convention in one of the States without his knowledge. But he immediately wrote, declining the nomination, and declaring, that he would not accept the office even with the unanimous consent of the whole people.

"Other than what he was he would not be,  
Nor change his state with him that sceptre wields."

In the early part of this year his work on Promissory Notes was printed, and received with the highest favor. It is referred to in the following letter from an illustrious jurist of Germany:—

À MONSIEUR WILLIAM W. STORY.

Heidelberg, 20 Octobre, 1846.

MONSIEUR :

J'ai reçu il y a quatorze jours votre bienveillante lettre du 14 Avril, et les ouvrages que votre complaisance m' a adressé. Je m'empresse de vous en témoigner une profonde gratitude. L'ouvrage de votre père est précieux pour moi. Je ne puis pas vous exprimer quelle est la haute vénération que tous les jurisconsultes Allemands partagent avec moi pour votre défunt père. Le nombre des jurisconsultes qui savent si bien réunir la profonde érudition, le sens pratique, qui saisit si bien les points saillants, la clarté du développement, et l'art d'analyser les questions les plus délicates, est petit. On est d'accord que les ouvrages de M. Justice Story sont classiques. On les cite comme la plus puissante autorité, et tous les juricon-

sultes reconnaissent que M. votre père était le premier jurisconsulte des Etats-Unis. Vous savez que son ouvrage "On Bills of Exchange" est traduit en Allemand par Mr. Freitschke. L'ouvrage "Commentaries on the Law of Promissory Notes," produira le plus grand effet, autant plus que la science de droit commercial ne peut pas se vanter de posséder un ouvrage sur cette matière importante. J'ai fait un article sur l'ouvrage de votre père sur les Lettres de Change. Je veux insérer aussi un article sur l'ouvrage "On Promissory Notes." Des hommes tels que le feu Story ne sont pas morts; ils vivent dans la mémoire reconnaissante de tous les hommes qui savent apprécier les grandes qualités qui l'ont distingué au plus haut degré. . . .

Agréez, Monsieur, mes remerciements réitérés et l'assurance du profond respect avec lequel j'ai l'honneur d'être

Monsieur,

Votre tout dévoué

MITTERMAIER.

The previous work on Bills of Exchange is thus noticed by Mr. Burge.

TO HON. JUSTICE STORY.

Temple, March 31st, 1845.

MY DEAR SIR:

I have allowed a long interval to elapse before I returned you my sincere thanks for the gratification you afforded me by your letter. I have since had to acknowledge my fullest obligations to you for your valuable present of your Commentaries on the Law of Bills of Exchange. I have read it with great interest, and I have derived from this, as I do from all your admirable works, the most profitable instruction. I rejoice to find you adhere to your excellent plan of bringing illustrations from the law of Continental Europe. I am persuaded the more we travel beyond our own Courts and our own reports and our own jurisprudence, the more are we



likely to advance and improve our own jurisprudence and our administration of it.

With the purest esteem and respect,

I am, dear sir, yours most faithfully,

WILLIAM BURGE.

My father's frankness and affectionate nature appear in the following letter on Mr. Sumner's Oration, entitled "The True Grandeur of Nations." In this Oration the whole War System of the Commonwealth of Nations is attacked with great ability and enthusiasm, and my father seems to have understood its author as contending against resistance under any circumstances. The Oration, however, while it unequivocally condemns the *custom* or *institution* of War as an established Arbiter of Justice between nations, recognized as such by International Law, does not actually raise any question of the right of self-defence.

TO CHARLES SUMNER, ESQ.

Cambridge, August 11, 1845.

MY DEAR SIR:

I thank you very sincerely for your present of a copy of your Fourth of July oration. I have read it with uncommon interest and care, as you might well suppose, as well on your own account as from the various voices of fame which succeeded the delivery. It is certainly a very striking production, and will fully sustain your reputation for high talents, various reading, and exact scholarship. There are a great many passages in it which are wrought out with an exquisite finish, and elegance of diction and classical beauty. I go earnestly and heartily along with many of your sentiments and opinions. They are such as befit an exalted mind and an enlarged benevolence. But from the length and breadth of your doctrine as to war, I am compelled to dissent. In

my judgment, war is under some (although I agree not under many) circumstances, not only justifiable, but an indispensable part of public duty. And if the reasoning which you have adopted, be sound, it extends far beyond the limits to which you have now confined it. It is not, however, my intention to discuss the matter at all with you; I am too old to desire, or even to indulge in controversy. No one who knows you, can doubt the entire sincerity with which you have spoken. All that I desire to claim, is as sincere a conviction that in the extent to which you seem to press your doctrines, they are not in my judgment defensible.

In many parts of your discourse, I have been struck with the strong resemblances which it bears to the manly, moral enthusiasm of Sir James Mackintosh; but I think that he would have differed from you in respect to war, and would have maintained a moderation of views, belonging at once to his philosophy and his life.

I have spoken in all frankness to you, because I know that you will understand your friends too well to wish them to suppress their own opinions; but be assured that no one cherishes with more fond and affectionate pride the continual advancement of your professional and literary fame than myself, and no one has a deeper reverence for your character and virtues.

Believe me as ever, most truly and affectionately,

Your friend,

JOSEPH STORY.

All that now lay between my father and his resignation was the duty of clearing the docket of the Circuit Court, so as to leave a fair field for his successor. To this task he set himself with too ardent a zeal, so scrupulous was he not to omit his duty in the least particular. Unfortunately, the docket was crowded with intricate and difficult cases. Among them may be mentioned

the case of *Véazie v. Williams*, where he considered very elaborately the law relating to sales by auction, and the effect of employing by-bidders or puffers to enhance the price by pretended competition. *Hough v. Richardson*, and *Doggett v. Emerson*, which were both long and difficult cases, growing out of the rage for timber speculations in Maine, and which involved the whole doctrine of Equity as to fraudulent misrepresentations and concealment in sales ; and *Emerson v. Davies*, in which he examined with much fulness the law of copyright.

During this last term he wrote the following characteristic letter to Mr. Bassett, for many years the Clerk of the Circuit and District Court in Boston, which seems like a valedictory on leaving that Bench.

TO FRANCIS BASSETT, ESQ.

Cambridge, August 5th, 1845.

MY DEAR SIR :

I have received your letter, announcing your resignation of the office as Clerk of the Circuit Court, on the 15th of the present month. It is an event which, from what has already passed between us, I have for some time anticipated, and, I confess, that it is to me a source of unqualified regret. I look back upon the many years, in which you have stood in this relation to the Court, with great satisfaction and pleasure, and cannot but feel gratified in the recollection, that nothing has occurred to interrupt our harmony, confidence, and sincere regard for each other. To your fidelity, ability, integrity, and devotion to the duties of your office, I beg to bear an open and voluntary testimony. It entitles you to the sincere thanks of the Court, the profession, and the public. In your retirement, I trust that you have many years to enjoy the rewards of a well-earned reputation.

I, also, am about to retire from the seat, which I have

occupied for nearly thirty-four years, and to leave to others the labors and anxieties, which are necessarily incident to a situation of so much responsibility, and requiring so many qualifications. I hope that my country may derive more benefit from the diligence and learning and talents of my successor, than I have been able to bring to the task. I claim nothing for myself, but the consciousness of earnest endeavor to administer justice, however imperfectly, according to my best understanding of the true spirit of the law.

Believe me, my dear sir, with great respect,

Truly, your obliged friend,

JOSEPH STORY.

At the beginning of September my father had finished the hearing of all the cases, and had drawn up in writing the judgment of the Court in all, except one, and that he had nearly completed. No judgments delivered by him, are more clear, able, and elaborate, than these ; none which more severely tasked the highest judicial powers. The last volume, in which his decisions are reported, may challenge comparison with any previous one. To the severe labor, necessary to clear the docket, he was urged, not only by his own ardent desire, thoroughly to discharge his duty, but by the earnest urgency of parties and counsel, who were naturally anxious that their particular case should receive the consideration of his mind. But the heat of the summer, and the continuous and excessive labor entirely exhausted him, and, while thus prostrated in strength, he took a slight cold in the beginning of September, which was immediately followed by a violent stricture and stoppage of the intestinal canal. From this very alarming attack, after great bodily suffering for many hours, he was at last relieved.

His strength was, however, utterly exhausted. Hopes were now entertained that he might recover, and every device that medical skill could suggest was employed. But, although the pain had left him, and the apparent difficulty removed, contrary to the expectations of the physicians, he did not improve in strength. Stimulating food and drink were now ordered, in the hope of reviving his system. And, on Sunday, he sat up in his bed, and sucked the juice of a bit of beefsteak, and took a little weak wine and water. As the domestic arranged his pillows, and propped him up in the bed, to enable him to partake of this, he said, smiling, "Well, David, they are trying to patch up this good-for-nothing body, but I think that it is scarcely worth while." From the first, he thought that the attack would be fatal, and now, although he was willing to employ every means suggested for his relief, it was plain, that he had little faith in their good effect. Soon after, he called my mother to him, and said, "I think it my duty to say to you, that I have no belief that I can recover; it is vain to hope it; but I shall die content, and with a firm faith in the goodness of God. We shall meet again." He then ceased, and lay, as in prayer, with uplifted eyes. In this calm state, and very feeble, he continued for about two days, not regaining his strength, but apparently not losing it. All prescriptions failed in reviving him. During this time, he said, "If I were not thus ill, my letter of resignation would have been now on its way to Washington. I should have completed my judicial life." On Tuesday night, at about midnight, and apparently without cause, a change took place; and it was manifest that he could not live long. During the

early part of Wednesday, he gradually lost his strength, and he lay calm and peaceful, and without taking heed of the objects and friends around him. At about eleven o'clock, to a question, whether he recognized me, he opened his eyes and feebly smiled, stretching out his hand towards me, and murmuring some indistinct words. Shortly after this, he breathed the name of God, and this was the last word that ever was heard from his lips. Gradually he lost his consciousness, and, without pain, fell away into the arms of the good angel. At about nine o'clock in the evening of the 10th of September, 1845, at the age of sixty-six, he breathed his last.

Thus he died, full of honors and years ; before age had robbed him of a single happiness, or dimmed, in the least, the perfectness of his powers. His work was complete. Nothing was wanting to the entire completion of his judicial life, but to finish a single half-written judgment. Many literary plans, looking into the future, were, indeed, cut short ; but nothing remained unfinished. His last work had been published, and he had not begun another. He died happy, and in his home. He had now escaped that greatest of all losses, the loss of intellect, against which he always prayed to be spared. He was at peace ; going onward and upward still, in the fuller glory and the clearer light of a higher existence.

“He, the more fortunate, Yes ! he hath finished.  
For him earth hath no longer any future.  
His life is bright — bright without spot it was,  
And cannot cease to be. No ominous hour  
Knocks at his door with tidings of mishap.  
Far off is he, above desire or fear ;  
No more submitted to the chance and change  
Of the unsteady planets. Oh ! 'tis well  
With him ; but who knows what the coming hour,  
Vailed in thick darkness, brings for us.”

During his illness, the alternations of his condition were the engrossing subjects of interest in Cambridge and Boston. And most touching instances of the affectionate feeling which his kindly nature had created, were manifested among the townsfolk. Many of them thronged the gate, lingering round it, or returning, from hour to hour, to learn the tidings of his health, and cautiously refraining from noise. Tears stood in the eyes of the roughest, while they asked of him. All felt that they were about to lose a friend, or, as one of them expressed it to me, that "a part of the sunlight of the town would pass away with him." Everywhere a cloud hung over the village; business stopped in the streets; and even over the busy stir of the city, his illness seemed to cast a shadow.

His funeral, which took place on the 12th of September, was strictly private, in compliance with his wishes; but a large concourse of persons attended the hearse in which his body was carried to Mount Auburn, and clustered around his grave, when to the earth we gave back what belonged to it, yet what we had loved so much. Among them were the most distinguished men of Boston and its vicinity, and all of the members of the Law School. The townsfolk, also, closed their shops, and suspended their business for the day. He lies in the Cemetery of Mount Auburn, beneath the shadow of forest-trees, and over his remains stands a marble monument, erected by him, on which the names of the children he had lost, are recorded. On one side of this monument is the motto, — "Sorrow not as those without hope," and on the other, — "Of such is the kingdom of heaven." On the front now stands the following inscription, —

## JOSEPH STORY,

BORN, SEPTEMBER 18TH, 1779,

DIED, SEPTEMBER 10TH, 1845.

"He is not here—he hath departed."

The intelligence of his death threw a gloom over the community far and near. Tributes to his genius, learning, and virtue, were everywhere paid. Resolutions were adopted and speeches made at the opening of every Court over which he had presided, in which were all that the warmest friend could wish; and a beautiful and touching notice was written by his friend, Mr. Sumner, and widely circulated at home and abroad in the periodicals of the day.<sup>1</sup>

Several interesting and admirable discourses were pronounced from the pulpit in honor of him, among which may be mentioned those of Rev. William Newell, pastor of the Unitarian Church at Cambridge, of which my father was a member; Rev. R. W. Waterston, of the Church of our Saviour, in Boston; the late Rev. John Brazer, of the North Church in Salem, in which my father was a parishioner while he lived in Salem; and the Rev. Dr. Sharp, of the Charles Street Church, in Boston.

At a full meeting of the members of the Bar for the County of Suffolk, held immediately after my father's death, in Boston, a series of resolutions, drawn up by Charles Sumner, Esq. and George S. Hillard, Esq., in which the character, learning, and services of my father were recognized in a beautiful manner, were presented by Hon. Daniel Webster, who introduced them by some most appropriate and impressive remarks. After an ele-

<sup>1</sup> These will be found collected in the Appendix.



gant address to the Chair by Judge Davis, of the District Court, and the adoption of these resolutions, the Hon. Jeremiah Mason, with a few prefatory remarks, presented a resolution that "Mr. Webster be requested to pronounce a discourse on the life and judicial character of the late Mr. Justice Story, at such time and place as shall be designated by the committee of the Bar." This resolution was adopted, and the duty was accepted by Mr. Webster. It has never been performed.

In compliance with the request of the members of the Law School, Professor Greenleaf delivered the impressive and finished discourse on the life and character of my father, which has been quoted so often in the course of the previous pages. It was pronounced on the 18th day of September, eight days after my father's death,—that day being the sixty-sixth anniversary of his birth.

The Trustees of the Cemetery of Mount Auburn, at a meeting held immediately after his death, anxious that some suitable memorial of him should be placed on that spot, to the improvement of which he had so earnestly labored, and in which he felt so deep an interest, voted to "offer to the friends and fellow-citizens of the deceased a place in the new chapel, now in the progress of erection in Mount Auburn, for the reception of a marble statue of the late Joseph Story, when such a work, worthy of the character of the original, shall have been completed, through the contributions of the public." In consequence of this vote a sum of money was raised by the contributions of gentlemen in Boston for the purpose of erecting a statue, and the committee to whom the nomination of the sculptor was given, did me the honor to intrust the work to my hands.

And here it may be interesting to sketch, in words, his portrait. He was about five feet eight inches in height, solid and square in build, with a well-knit and active figure. In his movements he was restless and impulsive, walking very rapidly, and with a quick, short step, and glancing vivaciously about him. In his youth his hair was auburn, and clustered around his head in thick ringlets. By the time he became a Judge, it began to wear away from his temples and crown, and during the latter portion of life his head, in the front and upper part, was bald, saving a slight tuft of hair on the forehead, and was surrounded behind by a thick mass of fine, silvery hair. His forehead was smooth and round, rising domelike over his prominent and flexible eyebrows, beneath which glanced two eager blue eyes. His mouth was large and full of sensibility. The muscular action of his face was very great, and its flexibility and variety of expression remarkable. Its outward form and feature seemed like a visible text, into which every thought and emotion translated themselves,—a luminous veil, which moved with every vibration of the inward life. His face was a benediction. Through it shone a benign light, whose flame was fed by happy thoughts and gentle desires. His laugh was clear, hearty, ringing, and exhilarating. His voice was of the medium pitch, of great variety of intonation, and rising in the scale as he became earnest and impassioned, and while he spoke, his face was haunted by a changeful smile, which played around it, and flashed across it with aural light.

In his last will and testament are the following interesting passages, one of which explains his relation to

the Law School, a full statement of which has been before given:—

EXTRACT FROM WILL.

“I resign my soul into the hands of Almighty God, in humble reliance upon his infinite goodness and wisdom and mercy, and in a firm belief of the resurrection from the dead and a life everlasting. . . .

“My worldly estate is not large, partly because I have not felt as strongly as some persons the importance of wealth to happiness, and partly from my desire (which, upon this solemn occasion, it is not necessary to conceal,) to administer charity to those who, in the course of Providence, have been placed in a state of dependence upon my bounty. . . .

“I give to the President and Fellows of Harvard College, to their use and behoof forever, the following articles, viz.:—The portrait of my late excellent friend, Mr. Chief Justice Marshall, by Harding, which was presented to me by the Chief Justice himself; the portrait of my late excellent friend, Mr. Justice Washington; my own portrait, by Stuart; the busts of Mr. Chief Justice Marshall, and also of myself, by Frazee; the bust of myself, by my son, William W. Story, with his consent; the prints of Lord Eldon and Lord Stowell, presented to me by the latter, with their glasses and frames; two volumes from and belonging to the library of President Washington, with his autograph, and other written memorandums,—one being President Washington’s copy, and remarks thereon, of Mr. Monroe’s View of the Conduct of the Executive, (edit. 1797); the other Watts’s Views of the Seats of the Nobility and Gentry in England, (edit. 1779.) These books were presented to me by Mr. Justice Washington, as literary curiosities of no small value. I ask the President and Fellows of Harvard College to accept these as memorials of my reverence and respect for that venerable institution, at which I received my education.

“I hope it may not be improper for me to add, that I have devoted myself as Dane Law Professor for the last thirteen years,<sup>1</sup> to the labors and duties of instruction in the Law School, and have always performed equal duties, and to an equal amount, with my excellent colleagues, Mr. Professor Ashmun, and Mr. Professor Greenleaf, in the Law School. When I came to Cambridge and undertook the duties of my Professorship, there had not been a single student there for the preceding year. There was no Law Library; but a few and imperfect books being there. The students have since increased to a large number, and for six years last past have exceeded one hundred a year. The Law Library now contains about six thousand volumes, whose value cannot be deemed less than twenty-six thousand dollars. My own salary has constantly remained limited to one thousand dollars, (a little more than the interest of Mr. Dane’s donation.) I have never asked or desired an increase thereof, as I was receiving a suitable salary as a Judge of the Supreme Court of the United States, while my colleagues have very properly received a much larger sum, and of late years more than double my own. Under these circumstances, I cannot but feel that I have contributed towards the advancement of the Law School a sum out of my earnings, which, with my moderate means, will be thought to absolve me from making, what otherwise I certainly should do, a *money legacy* to Harvard College, for the general advancement of literature and learning therein.”

No satisfactory portrait was ever made of him. There are many paintings, but they all lack that which was most charming in his face. The best is one by William Page, which gives pretty well the earnest expression of his face. Two busts were made of him, one by Frazee, and the other by myself. I believe that the last is

<sup>1</sup> At his death sixteen years.

generally considered as the best likeness which remains of him. The constant change of expression and of the actual forms of his face made it a most difficult task to express it in sculpture or painting. Every representation of it lacks the life, animation, and glow of the original, and that union of strength with sweetness which it so beautifully displayed. The engraving, in the first volume, is from a crayon drawing by myself, made from recollection. The following is a list of the portraits made of him at various times : —

1. A portrait, by Gilbert Stuart, now belonging to Harvard College, but in the possession of my mother. Painted in 1819.

2. A portrait, by Chester Harding, belonging to James W. Paige, Esq.

3. A portrait, by Chester Harding, belonging to the Hon. Daniel Webster.

4. A portrait, by Chester Harding, belonging to Judge Fay.

5. A portrait, by Osgood, belonging to Franklin Story, Esq.

6. A bust in marble, by John Frazee, belonging to the Boston Athenæum.

7. A bust in marble, by W. W. Story, in his possession.

8. A bust in marble, by W. W. Story, belonging to Harvard University, and in the University Library. Modelled in 1846.

9. A miniature, by Miss Goodrich, belonging to my mother.

10. A crayon drawing, by Johnson, belonging to the family of Richard Peters, Esq. Drawn in 1845.

11. A crayon drawing, by W. W. Story, in his possession. Drawn in 1851, from which the engraving in the first volume of this work is taken.

## CHAPTER XVI.

### CONCLUSION.

I HAVE now recounted the acts of my father's life, and my task is drawing to its close. As I compare with the living original this tame and feeble portraiture, so unskilfully drawn, so deficient in all respects, I cannot but feel how utterly unworthy it is. I have collected together only the dry bones and relics of what was living and lovely; that which animated them eludes my grasp. All that now remains is to give a brief sketch of his mind and character, to recapitulate rapidly his gifts to the profession and the world, and to add a few personal reminiscences.

The simple recital of what he did is his best eulogium. His works are his best monument. His life preaches the gospel of labor. In it was no hour wasted, no energy undeveloped, no talent misapplied or unemployed. It was spent in no idle dreaming, in no immoral or empty pursuit of worldly pleasure, but was earnestly devoted from beginning to end to the attainment of pure ends by pure means. The rashness and passion of youth left no stain upon his character. There were no excesses of thought or act to repent. The world had no temptation to seduce him from the path of virtue, and he died as pure of heart as he was born. The friend of Justice, Freedom, Truth, he paid them homage in every

act and thought, and never sacrificed duty to worldly interest or ambition.

Of many distinguished men, it is true that they show fairer in the distance, and that proximity blunts the edge of our admiration by developing meannesses, weaknesses, and vices, which were lost in the splendor of their fame, or hidden beneath their towering faculties. This was not true of my father. He was singularly free from those blemishes of character, or of habits, which mar so many a noble mind. Those who knew him best, valued him and loved him most. The closer the scrutiny, the more beautiful seemed his character. His was not an irregular and precipitous genius, where great defects yawned beside lofty powers, only to lend them greater effect, but a uniform and regular nature, all parts of which were in harmony. It was like some gently sloping mountain, which swells by slow gradations into the upper air;—not like a sheer cliff which startles the imagination to exaggerate its height. His goodness was quite equal to his greatness. He had few defects for friendship to conceal. He was not perfect, for perfection is not allowed to mortal man, but in none did the alloy of humanity ever bear a smaller proportion to the true ore. There was the same harmony of proportion in his mental structure as in his character. His genius was not the result of an exaggeration, or over-development of any particular faculty, or of a preponderance towards one direction, but of completeness of organization and balance of powers. There was in him a singularly exact adjustment of passions and faculties,—the motive power of the one being just equal to the distributive power of the other.

In this completeness of nature he resembled others of the distinguished men of this country,—Washington, Franklin, Marshall, Hamilton. Their genius was not a splendid excess, but a harmonious organization. Into all their acts they threw the weight of their whole character—behind all they did was a latent force. They possessed the charm which springs from wholeness of nature. Of a similar constitution of mind were Goethe and Humboldt, who had not so much a special genius as a whole intellect.

My father's mind was many-sided, and of great flexibility of direction,—applying itself with ease to apparently incongruous operations. He would have distinguished himself as well in any other sphere as in that which he occupied, for he could apply the whole of his powers wherever he wished. From the most abstract question of real law he turned instantly, and with zest, to some light badinage. From his desk, where he was drawing up a difficult judgment, he would go instantly to the lecture-room, to discourse upon an entirely different subject, conversing on the way upon some local matter of interest, and seeming to give to each in turn his whole attention. He was never abstracted in society. His occupation did not cling to him like the old man of the sea to Sinbad. He left the author in the library, the judge on the bench, the professor in the lecture-room, and became purely the social man in social intercourse. He was as light-hearted and joyous in society as if he had no care or burden of work, and nothing to do but to amuse himself.

Often have I heard him say, that after an interruption of hours, and even of days, he could take up the pen



and continue a sentence which he had left half written, without reading back, going on with the same certainty and rapidity as if he had never been stopped. With such flexible powers, and so determined a will, he easily accomplished a great deal in a short time.

Yet, he had remarkable powers of concentration, and easily threw the whole weight of his mind on the subject in hand. He never tampered with his talents by listless half-doing, or by working with divided attention. Whatever he did he did with might and main, no matter how trifling it was. The object on which he occupied himself was the focus of his whole vision for the time. He was as earnest in hammering a nail as in expounding an intricate question of law.

He was never unready. So perfectly under control were all his powers, so perfectly arranged his knowledge, that he seemed to do as well without as with preparation. Most of the best speeches he ever made were *ex tempore*,—the birth of the moment,—as surprising to him as to any one. He depended little upon moods. What he could do, he could do nearly as well at one time as at another. A determined will commands words and powers. It makes opportunities. It “takes the instant way.” He lost no time in dallying with his subject or himself. His faculties were trained to do his bidding. On no occasion was his readiness more remarkable than when called upon to preside at public dinners. For this he had a peculiar talent. His gayety diffused itself all around. He kept the ball always in the air—never was at fault for a repartee, a jest, or a little squib of a speech—shot continual pellets of humor and merriment around the table, and had the power of

drawing out others as well as giving himself out. No one who was ever present at the Phi Beta Kappa dinners, when he presided, can forget the spirit, gayety, and interest he infused into them, and the tact with which he managed to elicit the best from every one.

Idleness my father could not tolerate. Any labor was better than none. Work was the natural function, the normal condition of his mind. Yet he never moiled and toiled at his work. He was not a nervous man. There was almost no wear and tear in his mental economy. The whole machinery played easily, and without irritability of friction, as if all its wheels were perfectly adjusted and oiled. Undoubtedly he overworked himself, but he would not have lived so long nor so happily with underwork. His natural enthusiasm demanded an outlet and an object. It changed all acquirement into power, which could not be restrained from expression, as fire converts what is taken into the boiler as dead water into living steam, which must have its outlet or its work.

George Sand, in her *Consuelo*, has described a similar constitution of mind. She says of her heroine : — “ *Consuelo avait une de ces rares et bienheureuses organisations pour lesquelles le travail est une jouissance, un repos véritable, un état normal, nécessaire, et pour qui l'inaction serait une fatigue, un dépérissement, un état maladif, si l'inaction était possible à de telles natures. Mais elles ne la connaissent pas ; dans une oisiveté apparente, elles travaillent encore ; leur rêverie n'est point vague, c'est une méditation. Quand on les voit agir, on croit qu'elles créent, tandis qu'elles manifestent seulement une création récente. Tu me diras, cher lecteur, que tu n'as guère connu de ces organisations exception-*

nelles. Je te répondrai, lecteur bien aimé, que je n'en ai connu qu'une seule."

Many learned men are encumbered with their learning. Their acquirements overpower their original force, deaden their faculties, obscure their judgment, make pedants of them. The minds of some are like storehouses, in which the goods are so numerous and heterogeneous, and stowed so confusedly, that they cannot be reached or used with efficacy. This was not so with my father. Facts never lay dead in his mind. He fused them into thought. His knowledge was all systematized, and became wrought into his nature, as the food is into blood.

He had also, what is rarest among learned men and scholars, common sense. He was not out of his element in the common affairs of every-day life. He never mistook mere ideas for facts. His mind never generated what Bacon calls "vermiculate questions of no soundness of matter or goodness of quality." His calm, practical judgment was as remarkable as any other quality. It was as much to be relied on in the commonest as in the most important matters, and polarized as it was to justice, and veering never to passion or interest, it was seldom at fault. Judgment was with him an instinctive as well as a logical faculty.

In his oration before the Alumni of Harvard University, he says of Mackintosh,—

"But, for an example still more instructive, and far more interesting and affecting, let us turn to one of the most philosophical and polished scholars of our own day, I mean Sir James Mackintosh, whose genius has illuminated whatever it

has touched, and touched almost every department of literature. Whoever has read the memoirs of that excellent man, written with an unassuming elegance, and a just filial reverence, by an accomplished scholar, must have risen from the perusal with mixed emotions of profound respect and profound melancholy. What do we here see, but a mind of the brightest order and most varied attainments, perpetually struggling with its own infirmity of purpose,—amassing, nay, devouring, all sorts of learning, with an eager and discriminating attention, sketching the outlines of the plan of some great work, and resolving at some future time to execute it,—rebuking its own delays, and yet persisting in the same course,—and at last, departing from the world, in a good old age, without having achieved any one of the loftier purposes at which it aimed. Everywhere about us are the mighty fragments of his genius, like the mutilated Torso, exhibiting, in its broken proportions, the exquisite skill of the artist. His Introductory Lecture on the Law of Nations, the most magnificent discourse in our own, or, perhaps, in any other language, is but a finished portico for the vestibule of a temple, destined never to be erected. And, again, his Historical Dissertation upon the Progress of Ethical Science, which it is impossible to read without kindling into enthusiasm, leaves us, with its bright but rapid lights, just on the threshold of the very inquiries, to which it points our way. And then, again, his contributions to the History of England seem but interludes between the acts and epochs of that great drama, where the curtain drops, just when the principal actors are about to play their parts on that grand theatre of human life. What can be more melancholy, or more full of regrets, than the contemplation of such a mind, so comprehensive in learning, so elevated in virtues, which has thus passed away, leaving so many admirable enterprises unaccomplished, and so many plans for immortality unfulfilled?

“It may be said, that all this is the result of peculiar temperament. I think far otherwise; it is the natural result of

the seductive influences, of which I have spoken, and of the profuse expenditure of intellectual power upon ends and aims, incompatible with enduring excellence, which is so much fostered by the spirit of our age. How difficult must it be to resist the temptations to universal reading, and the fascinations of colloquial discourse, when they win instant praise, and circulate freely to the very boundaries of the literary world. For one, who, with a stout heart, and determined perseverance, could resist them, and die, like Sir Walter Scott, with his pen in his hand, there are hundreds, who would surrender themselves the willing, or the reluctant, victims to their influence, and resolve, and re-resolve, and yet close their lives in the midst of hopes deferred, and expectations blasted, and projects abandoned."

In this respect he was the opposite of Sir James Mackintosh, and I well remember the interest with which he read the elegant biography of that distinguished man by his son, commenting, with some impatience, and much regret, on his want of decision and energy in carrying out his ideas and large designs. So entirely opposed was this characteristic feature in Sir James's mind to my father's, that it made a strong impression on him. He read and re-read the biography, very carefully marking it, with the intention of writing a review of it. This, however, he was prevented from doing by his many occupations. Among other marked passages he has placed his name against the following: "Our happiness depends not on torpor, not upon sentimentality, but upon the due exercise of our various faculties; it is not acquired by sighing for wretchedness, and shunning the wretched, but by vigorously discharging our duty to society."

The Honorable Josiah Quincy, in a letter addressed to me, and dated August 20th, 1851, gives the following testimony to my father's industry:—

“When, as President of the University, I was discussing with Mr. Dane some of the principles of his foundation, he expressly stated to me, that one of his chief inducements to apply his funds to the establishment of a Law Professorship was his opinion concerning the wonderful adaptation of your father's talents and acquirements, to give his foundation depth, celebrity, and usefulness; and when, in a degree, astonished at the work he was about to require of his first professor, I asked, if he thought it possible that Judge Story would fill up that extensive outline, Mr. Dane replied, ‘Yes, sir, I know the man; he will do this and more; for, uncommon as are his talents, his industry is still more extraordinary.’”

His knowledge of law was almost boundless. He had traversed all its coast and inland. He knew the soundings of all its seas, from the Black Sea of the Feudal Law, and the Red Sea of the Criminal Law, to the great Atlantic and Pacific of National Law and Equity. His reading was not merely professional; it extended into the pleasant regions of general literature. He was well versed in the classics of Greece and Rome, of whom his favorites were Aristotle and Cicero. He was a good historical scholar; and in the sciences and mechanic arts, he had attained to considerable proficiency. He was omnivorous of knowledge, and read every thing he could obtain. No legal work appeared, that he did not examine. Every volume of Reports in England and America he studied, and he read, to a considerable extent, the new works of light literature. His rapidity

of perception and comprehension enabled him easily to master all that fell in his way; and his mind grappled with hooks of steel to all that he acquired. His literary discourses will evidence the general scope of his studies. He used, pleasantly, to say, that he had only time to read with his thumb-nail, and so it would seem to one who observed the rapidity with which he turned over leaf after leaf. Yet, despite this rapidity, he never failed completely to absorb the essence of the book. Of him could most truly be used the words which Daniel applies to the Earl of Devonshire.

“Thou heed'st not books as many have  
For ostentation but for use, and that  
Thy bounteous memory was such as gave  
A large revenue of the good it gat.  
Witness so many volumes.

And none would think, if all thy life had been  
Turned into leisure, thou could'st have attained  
So much of time to have perused and seen  
So many volumes that so much contained.”

His memory was very tenacious, and, in law, wonderful. Of all the leading cases he could cite volume and page, and quote them without referring to the book. It was a not uncommon thing for him to say, in the course of an argument, where a particular doctrine was contended for by counsel, “Mr. —, if you will look on such a page, in such a volume of Reports, half way down on the left side, you will find the following proposition modifying in such and such a manner your doctrine.” After studious preparation of cases for argument, I have often found, that his knowledge was more precise and more wide as to the special point, and that he would point out extem-

pore additional cases I had never seen. I am supported in this by a high authority. "I speak from personal observation," says Mr. Greenleaf, "in saying, that upon the opening of a cause before him, under whatever decision it might fall, his superior familiarity, not only with the general doctrine of the subject, but with its minuter distinctions and qualifications, and with the authors who had treated it, frequently surprised even those who had prepared themselves to speak to the particular case."

In the "Letters, Conversations, and Recollections of S. T. Coleridge,"<sup>1</sup> edited by Mr. Alsop, occurs the following anecdote of my father, which is peculiarly illustrative of these remarks :

"When Lord Stanley was in America, it was necessary to speak of the General Post Office. He did not know where it was ; whilst a Judge, who was at the table, pointed out its exact situation in Lombard Street, and evinced so much local knowledge, that Lord Stanley said, "You must have been a long time in London —— ?" "I never was there in my life," was the reply.

When we review his public life, the amount of labor accomplished by him seems enormous. Its mere recapitulation is sufficient to appall an ordinary mind. The judgments delivered by him on his Circuits, comprehend thirteen volumes. The Reports of the Supreme Court during his judicial life, occupy thirty-five volumes, of which he wrote a full share. His various treatises on legal subjects cover thirteen volumes, besides a volume of Pleadings. He edited and annotated three different treatises, with copious notes, and published a volume of Poems.

<sup>1</sup> Page 124.



He delivered and published eight discourses on literary and scientific subjects, before different societies. He wrote biographical sketches of ten of his contemporaries ; six elaborate reviews for the *North American* ; three long and learned memorials to Congress. He delivered many elaborate speeches in the Legislature of Massachusetts and the Congress of the United States. He contributed a large number of valuable articles to the *Encyclopedia Americana*, and to the *American Jurist*. He also drew up many other papers of importance, among which, are the argument before Harvard College, on the subject of the Fellows of the University ; the Reports on Codification, and on the salaries of the Judiciary ; several very important Acts of Congress, such as the Crimes Act, the Judiciary Act, the Bankrupt Act, besides many other smaller matters.

In quantity, all other authors in the English Law, and Judges, must yield to him the palm. The labors of Coke, Eldon, and Mansfield, among Judges, are not to be compared to his in amount. And no jurist, in the Common Law, can be measured with him, in extent and variety of labor.

Few men attain to a mastery over more than one department of knowledge or science. It was his rare fame to excel in many. In the history of the English Bench, there are but few names at all famous as authors in the law, and Judges. Sir William Blackstone, Lord Coke, Lord Tenterden, perhaps Lord Bacon. But Lord Bacon was only a Judge by name. The fame of Sir William Blackstone rests solely on his *Commentaries* ; and Lord Coke was rather an editor and commentator, than an author. My father attained equal eminence in

both departments, and it would be difficult to determine upon which of the two his fame chiefly rests.

English law books are but too often mere digests of cases, arranged with more or less system, but wanting in all the elements of a philosophic or scientific treatise. They are generally mere compendiums, written for practical lawyers, and for *nisi prius* use, serving rather as text-books of precedents than of principles. The student in reading them frequently finds himself lost in a labyrinth of contradictory cases, and forced to rely on his own sagacity to discover the clue of principle by which they are threaded. The continental treatises, on the other hand, are scientific in their arrangement and development; but too metaphysical, too diffuse, and too ingenious and hair-splitting. They have two faces, one of morality and one of law; and the boundaries between the outer forum of the law and the inner forum of the conscience are frequently confused. They are less practical but more philosophical than the English treatises. My father, in his *Commentaries*, sought to unite the advantages of both. Proceeding upon the philosophical method of the civilians in the development of principles, with their exceptions and modifications, he illustrated them by the actual cases in the books, and avoided thus the errors of both systems. While he shuns vague speculations, he discusses unsettled questions, and subordinates, throughout all his works, cases to principles. Beginning with general principles, he proceeds to follow them through their various modifications and exceptions, using the Reports as illustration, and throwing into the notes all extracts from judgments illustrative of the text, instead of blocking up with them the pro-

gress of the work, until he has exhausted the subject. His Commentaries are remarkable for method, clearness, and learning. There are no blind passages, no careless generalizations, no bewildering contradictions to embarrass the student. After struggling through the confusion of statement, which the usual English method of writing *nisi prius* books engenders, the student of one of my father's books finds the same relief as the traveller, who, after losing his way, and blundering on through bog, brambles, and briars, issues upon a clear road, where he can walk with ease and certainty on his appointed journey.

They are not characterized by conciseness and brevity, but by fulness and learning. He is, perhaps, sometimes over-careful to make himself clear. The largeness of his learning, sometimes interfered with the broad annunciation of an unincumbered proposition, which a less careful and full mind might have stated in an unqualified form. The range of his thought necessarily made him full, but his diffuseness is almost always a proof of his caution, not of his haste. Nothing is easier and nothing more unsafe, than universal propositions and concise statements in the law. Too much simplification often results in error. My father's books have a higher merit than conciseness,—clearness. No one who carefully reads them can fail to understand the subject treated in them, in its whole bearings and its particular modifications. Nor do I believe, that any one who has had occasion to consult them on a special question, ever found that it was too fully treated or vaguely stated. They have everywhere taken the place of previous works on the same subjects. They have the tower-mark of public

opinion. The voice of praise has echoed from England and the Continent. Some of them have been translated into foreign languages in countries where a different system of law prevails. They have received the highest encomiums in the European journals. They have been cited as authority in Westminster Hall; and one of the most accomplished and learned lawyers of the age has not hesitated, in alluding to them in a debate in the House of Lords, to speak of their author as "greater than any law writer of which England could boast, or which she could bring forward since the days of Blackstone."<sup>1</sup>

One cannot, in this connection, but recall the interesting coincidence between the establishment of the Vinerian Professorship at Oxford University, which gave birth to the Commentaries of Blackstone, and the establishment of the Dane Professorship at Harvard University, the fruits of which are the Commentaries of my father. In like manner as Mr. Dane devoted the receipts of his Abridgment of American Law to the foundation of the legal professorship to which my father was appointed, did Mr. Viner, with a similar zeal "for the benefit of posterity and the perpetual service of his country," apply the proceeds from the sale of his Abridgment of English Law, to the same object.

Though bred to the common law, and delighting in its logic and sound common sense, my father was by no means its blind idolater. Many of its doctrines, founded as they were in feudalism, and developed amid barbarous manners and degrading servitudes, served, in his opinion,

<sup>1</sup> Lord Campbell, in a speech on a motion of thanks to Lord Ashburton, April 7, 1847. Such flattering testimony from so able a source, is truly gratifying. They who are laurelled themselves may give laurels to others.

only to throw the law into disrepute, and thereby to weaken its influence. All that did not recommend itself to common sense, all that was purely arbitrary, all especially which was unjust and opposed to freedom, he wished to strike away from our jurisprudence as shackles, by which it was crippled. He was not the bigoted admirer of the common law; but in the Roman law he recognized an elder sister, of fair proportion and charming aspect, to whom he gave much of his love. The flowing robes of Equity were taken from her shoulders, and he thought Law might also borrow from her with profit. The part of American Jurisprudence was, in his opinion, to sit at the feet of all the laws and codes, and to collate from them the true principles, adapting and enlarging them to her own needs, not blindly devoted to any, but taking from each what was justest and most practical. As America takes to itself and naturalizes the people of all nations, who seek its protection, thereby creating a composite people, so he thought it should be cosmopolitan in its jurisprudence, and embody into its law all good rules and principles, whatever might be their birthplace. The more deeply he studied the Roman Law, and its various modifications in the civil codes, the more he became enamored of its principles; and in all of his works he has introduced them, in illustration or contradiction of the common law, giving the preference often to the former. I cannot but think, that his works have tended greatly to determine the attention of the profession in this country towards the continental jurisprudence, and that much credit is due to him in pioneering the way, and recommending the advantages of its

systems, as well as for the adoption of many of its principles into our jurisprudence.

To the Commentaries on the Conflict of Laws has been generally accorded the praise of being his best work. It is, indeed, more original in its plan and scope, more imposing in its array of learning, and more recondite and universal. Its European reputation above his other books, may, perhaps, be accounted for in measure, by the fact, that it is not limited in its subjects to the common law of England and America, but is cosmopolitan. Able as it is, it may be questioned, whether it is more valuable or better written, than the Commentaries on Equity. The richness and variety of learning which distinguish the latter work, the clearness of its doctrines, its admirable method and development of its subjects, certainly entitle it to a place very near, if not beside, that on the Conflict of Laws. It has done more to reduce Equity to a science, than any treatise on the subject; and, in fact, it is the first which contains a logical and systematic treatment of the complicated doctrines of Chancery Jurisprudence. It involved vast labor and learning, and its execution is as successful, as it was difficult. Its value can be readily estimated, by considering how great a void its obliteration would make.

The Commentaries on the Constitution of the United States have received, everywhere, the highest commendation. They are the fullest, most acute, and most systematic treatise upon our political system that has ever been written. The obligation of my father to the Federalist, in the preparation of this work, is fully acknowledged by him in his preface. His Comment-

aries, however, in their discussion of the Constitution, far exceed that able work, in extent and minuteness, as well as in method and consecutive order; and the History of the Colonies, which forms an important and independent portion of his work, not touched upon by the Federalist, is a model of historical composition, accurate, learned, and philosophical.

Next to these works, I cannot but think that the treatise on Bailments, is entitled to the highest praise. It exhausts not only the English and American doctrine, but the Roman and Continental law has been laid under contribution, to enlarge and build up the narrow, shambling structure of the common law into a full and admirable system. It has more the merit of creation, than any book, except that on the Conflict of Laws.

Although, when my father died, his life was complete in itself, yet, it looked forward to new and vast juridical and literary plans for the future, which were cut short by death. These will fully appear in the following extract from a letter addressed to me, by Hon. Charles Sumner, on October 6th, 1851.

“Your father, at the time of his death, was about to lay down his functions as a Judge, but he was looking forward to increased activity as a teacher and an author. As his scheme of authorship was the subject of frequent conversation in our interviews, I am able to mention it precisely.

“His last work was on Promissory Notes. Had he lived, he would next have treated the Law of Shipping, a subject for which he was well prepared, and, after this, the Law of Insurance. Comprehensive commentaries on these two branches would have completed his course on commercial law. He would, then, have returned to Equity, and finished the

consideration of that ample department, by a work on its Practice, which would have been the companion to his Commentaries on Equity Jurisprudence and Equity Pleading. The whole subject of Admiralty, embracing the Prize and Instance branches, in their history, jurisdiction, and practice, stood next in order, and he hoped to present it, as it had never yet been presented, with completeness and symmetry. To this work, Chief Justice Marshall often pressed him, saying, that of all persons, in England or America, he was the most competent to do it. This labor was to have been followed by one grander still, on the Law of Nations. And, when all these vast, self-imposed juridical tasks had been accomplished, then he was to employ his still constant pen, in reminiscences of his times and contemporaries, somewhat after the manner of Charles Butler, the learned lawyer and gentle scholar, whose pleasant book he enjoyed greatly. You will see, therefore, that much as your father did, he died with plans of labor stretching before him, which might daunt the youngest and most courageous heart. But, to all these, he looked forward as a pastime and delight."

The judicial opinions of my father may fairly challenge a comparison with any that the world can boast. For closeness of texture and compact logic, they are equal to the best judgments of Marshall; for luminousness and method, they stand beside those of Mansfield; in elegance of style, they yield the palm only to the prize cases of Lord Stowell; but, in fulness of illustration and wealth and variety of learning, they stand alone. At the period of his elevation to the Bench, some provinces of the law were unexplored, some partially reclaimed, few, except real law, elaborately cultivated and subdued to rule. The doctrines of International Law, and of Admiralty and Prize Law, with their various modifica-



tions, were, as we have seen, but partially established, and imperfectly understood. The embarrassing questions, daily arising under the non-intercourse and embargo laws, and the subsequent war with England, rendered it necessary for him to extend rules already existing, and often to create new ones. Both these branches of law, are deeply indebted to him. He may, indeed, be called the creator of the Admiralty law, in America.

Among his most important judgments on Prize Law may be mentioned the *Julia*, (1 Gallison, R. 594,) the schooner *Rapid*, (1 Gall. R. 295,) the brig *Joseph*, (1 Gall. R. 545,) the *Marianna Flora*, (3 Mason, R. 116, S. C. 11 Wheaton, R. 36,) the ship *Ann Green*, (1 Gallison, R. 274.)

His judgments on the Instance side of the Court are equally able with those on Prize Law. Both will stand while the Admiralty Jurisdiction exists, as monuments of learning, ability, and comprehensive liberality. If they yield to those of Lord Stowell in style, they surpass them in breadth of principle and in fulness of learning. The judgment in the case of *La Jeune Eugénie*, in which the slave trade is declared to be contrary to the law of nations, cannot be paralleled by any judgment of the English Judge, who, in the case of *Le Louis*, held the opposite doctrine. Nor do the Admiralty Reports of the English or American Bench contain a judgment which for profusion and reconditeness of learning compares with the case of *De Lovio v. Boit*, in which the jurisdiction of the Admiralty is explored to its most ancient foundations, and is clearly explained, established, and vindicated. The principles of *De Lovio v. Boit* were afterwards applied by my father with singular force, clearness, and

consistency, in a great number of cases which now stand as sea-beacons of the maritime law. In these the conflicting rights and liabilities of ship-owners, seamen and masters, and the claims of salvors and material-men are discussed and adjusted with great sagacity. The following may be cited as among the most important. The schooner *Tillon*, (5 Mason, R. 465); the schooner *Volunteer*, (1 Sumner, 571); *Harden v. Gordon*, (2 Mason, R. 319); the ship *Mentor*, (4 Mason, R. 84); *Chamberlain v. Chandler*, (3 Mason, R. 243); *United States v. Grush*, (5 Mason, R. 465); the ship *Henry Ewbank*, (1 Sumner, R. 401); the ship *Nathaniel Hooper*.

In every branch of Commercial Law, he was peculiarly at home. The Gordian knot of the most intricate cases he "would unloose familiar as his garter." In the doctrines of Insurance he was especially learned, and his judgments in this department may challenge comparison with Mansfield's for variety, compass, and ability. Among the most prominent may be mentioned the elaborate cases of *Peale v. The Merchants' Insurance Company*, (3 Mason, R. 27,) involving many interesting questions on this head; *Conard v. The Atlantic Insurance Company*, (1 Peters, R.) which was a question arising on a respondentia bond; *Pope v. Nickerson*, (3 Story, R.) which contains a discussion of the powers and rights of a master of a vessel over the ship and cargo; *Peters v. The Warren Insurance Company*, (3 Sumner, R.) which was a case of collision. In the decision of this case my father dissented from the English case of *Devaux v. Salvador*, and such was the weight of this judgment that Lord Denman says, in a letter to Mr. Sumner, alluding to it, which has already appeared in the foregoing pages,—

“This opinion will at least neutralize the effect of the English decision, and induce any of their courts to consider the question an open one.” *Citizens’ Bank v. The Nantucket Steamboat Company*, (2 Story, R. 17,) in which the law relating to common carriers by water is luminously developed, may also be referred to as a very leading case. Other important cases on this head are *Alsop v. The Commercial Insurance Company*, (1 Sumner, R. 451,) *Hancox v. The Fishing Insurance Company*, (3 Sumner, R. 389,) *Bullard v. Bell*, (1 Mason, R. 244,) *Cremer v. Wigginson*, (1 Mason, R. 324,) *The Ship Fortitude*, (3 Sumner, R. 228.)

In his constitutional judgments my father was of the school of Marshall and Kent, and with them advocated the views and the policy of Washington. The Constitution, in his opinion, created a national government, and not a confederacy. It was not a mere formal tie connecting distinct sovereignties, but a surrender of paramount powers to the Federal government. He deemed that it was to be construed liberally in favor of that government, so as to embrace not only all powers directly given, but all incidentally necessary or appropriate to give full effect to its express provisions; that the rules governing the interpretation of a contract between individuals were applicable to this contract between the States, and that the intent, when clearly manifested, was to override any narrow verbal meaning. He upheld the Constitution as creating a national power, independent of the States. The manifest inconveniences and difficulties growing out of the want of a central power in the previous confederacy, by which the conflict between the States themselves, and between the government and the

States should be regulated, formed, in his opinion, the motive for substituting the Constitution, and determined in a measure its meaning. The tendency of a strict construction, he thought, was to reduce the country again to the evils from which it had suffered under the confederacy. In a word, he held that the Constitution created a national government. This idea was the keystone to all his constitutional opinions, and was developed by him in a great variety of judgments. Among the most distinguished of his labors on this head may be mentioned, the cases of *Martin v. Hunter's Lessee*, in which the extent of the appellate jurisdiction granted to the Supreme Court of the United States by the Constitution is considered, which was his maiden judgment in constitutional law, and compares with any previous one by any judge; *Dartmouth College v. Woodward*, in which the question arose whether the "charter" of the College was a "contract," within the meaning of the clause in the Constitution providing that "no State shall pass any law impairing the obligations of contracts;" *City of New York v. Miln*, in which the clause in the Constitution, giving power to Congress to "regulate commerce with foreign nations, and among the several States," is discussed, and in which he delivered an opinion dissenting from the judgment of the Court, holding that this power belonged exclusively to Congress, and was not concurrent in the States; *Briscoe v. The Bank of the Commonwealth of Kentucky*, which was also a dissenting opinion, in which the constitutional clause prohibiting the issue of "bills of credit" by the States is discussed, and which contains a masterly historical review of "bills of credit" in the Colonies and during the Revolution; *Allen v.*

McKeen, (1 Sumner, R. 275); *Bank of the United States v. Dandridge*, (12 Wheat. R.) in which the artificial distinction between corporations and individuals, as to their rights, duties, and liabilities, is broken down; and the powerful opinion in the case of the *Charles River Bridge Company v. The Warren Bridge*, which for compactness of reasoning, vigor, and fulness, ranks beside the *Dartmouth College* case, and is one of his ablest efforts in any province of the law.

The constitutional judgments of my father, standing as they do beside those of Chief Justice Marshall, naturally provoke a comparison. They are the different expressions of two minds, one of which was fervid and imaginative, and the other calm and severe. Both are equally logical, clear and conclusive; but there is a warmth and color about my father's judgments which those of Marshall lack. One is a finished drawing in crayon or neutral tint, the other a painting with all the wealth of coloring. The one is unornamented, chaste and Doric; the other rich, elaborate, Corinthian. Marshall confines his argument to logical statement, stripping it of all that is not strictly necessary, and keeping a narrow course. My father takes a broader sweep, fortifies his reasoning with large learning, and draws contributions from high authorities to strengthen the stream of his argument. Marshall aims to convince; my father to satisfy. Marshall would defeat; my father would conquer. One decides, the other systematizes. In the judgments of Marshall he seldom travels beyond the record, and his reasoning is confined to the exact facts of the case, while my father invariably labors, by bringing together all the learning and power he can command, to establish some

principle which shall not only dispose of the particular case, but all others of a similar class. My father's judgments have, therefore, more general value than Marshall's as expositions of the law, at the same time that they are equally conclusive on the special facts of the case. In the manner of the one there is fulness, flow, and exuberance. In that of the other, clearness, closeness, logic; one is more scholar-like, the other more business-like. The naked branches of Marshall's judgments, well knit, fibrous, and unencumbered, stand forth to challenge the bitterest assaults, like a noble oak in winter, while those of my father are like the same tree clothed in the luxuriance of its summer foliage. The difference between their minds is very conspicuous in the case of *Dartmouth College v. Woodward*, in which opinions were delivered by both, and where the superior breadth and learning of my father's opinion must be confessed.

In the subtleties and technicalities of Real Law, the intricacies of feudal tenures, with their dependencies, contingent remainders, and executory devises, the product of a barbarous and illiterate age, when contradiction reigned supreme, he was completely at home. The dreary and entangled country of the Black-Letter, with its compound jargon, its verbal quibbles, and its scholastic refinements, was to him no unknown land. He had penetrated its dismal swamps and thick recesses, and knew their secretest paths by heart. In his very outset in the study of the law, as we have seen, he had plunged into its thickets. Their very intricacy and blindness stimulated him. Here he had also sought the science of special pleading, whose subtle webs were spun in every corner and covered every principle. In this arduous

study he had trained his mind to logical accuracy. Its rules, over which it is as dangerous for the unskilful to pass as "to overtread a torrent brawling hoarse on the unsteadfast footing of a spear," were to him a secure bridge of argument. So familiar were they that he often employed their formula to test the logic of his reasoning, and accounted them of great value to all who were thoroughly practised in their use.

Among the most important of his judgments in Real Law are, *Inglis v. The Trustees of the Sailor's Snug Harbor*, (3 Peters, R.) which was a writ of right involving questions as to the effect of alienage upon the power to take and hold lands by descent, the effect of non-entry by an intermediate ancestor, and of adverse possession, and the power of the demandant to recover a less quantity than the entirety of the estate. *Green v. Liler*, (8 Cranch, R.) which decides the doctrine, that where there exists a union of title and seisin in deed, either by actual entry or by livery of seisin, or by intendment of law, (as by conveyance under the statute of uses) the *esplees* are knit to the title so as to enable the party to maintain a writ of right; and *Carver v. Jackson*, (4 Peters, R.) which was an action of ejectment involving a discussion of the law of estoppel and of presumptions arising from long possession. On the subject of devises may be mentioned *Parkman v. Bowdoin*, (1 Sumner, R. 359,) *Sisson v. Seabury*, (1 Sumner, R. 235,) *Durant v. Ritchie*, (4 Mason, R. 45,) *Gardner v. Gardner*, (3 Mason, R. 178,) *Lippett v. Hopkins*, (1 Gallison's R. 455,) and *Arnold v. Buffom*, (2 Mason, R. 209.)

So devoted a study to the technicalities of Real Law,

and the dark ages of Black-Letter learning is apt to engender a bigoted conservatism, excessive submission to precedent, and an unwillingness to extend the boundaries of the law. But his devotion to Equity, as well as his mental organization, created a balance against any such propensity. His sympathies and tendencies were towards reform. He never considered or administered the law as a fixed and absolute system, incapable of expansion and modification, but as a flexible mould, susceptible of adaptation to the needs of society and the requirements of justice. He was anxious that it should keep pace with the age. He considered it as a living and growing system, whose dead limbs needed constantly to be lopped away. He endeavored to recommend it by harmonizing it with common sense and the practical needs of men. He always strove for the liberal doctrine, and wherever in the chain of precedents which bound him to a rule manifestly injurious in its operation, he could find a flaw or weakness he gladly broke it. Yet he was not a scorner of precedents. An established doctrine had with him great weight. He deemed even an arbitrary rule better than a condition of things where all was unsettled and surrendered to doubt. Free alike from that iconoclast spirit of reform which would break down the rules and precedents established by wisdom in former ages, in the pursuit of a phantom theory of legislation, and from that blind prejudice which hugs the dead body of the past in the vain hope of reanimating it by the warmth of zealous devotion, he strove to clear up the doubtful passes, to throw sunshine on the dark paths, to make the crooked ways straight and the rough places plain. He was a lover (not



an idolater) of established uses. In this, as in all things, his mind had that happy balance which preserved it on one side from exaggeration, and on the other from supineness. He was neither a bigot nor a fanatic.

It was his lot to construct, in great measure, several departments of American law, and in all his judgments to shew a mind cautious, liberal, and comprehensive. Rapid as it was in its processes of thought, it was never headlong or rash, and greatly as he advanced the law, he never took a new step without the most rigorous examination of the ground he was to occupy. In every difficult judgment which he pronounced, he exhausted the learning of the law upon the subject. The mode in which he prepared his judgments attests his caution and patience. Mr. Greenleaf thus relates it as having been communicated by my father to him but a short time previous to his death:—"It was his habit, after hearing an argument in any case of importance, to defer the investigation of the matter until his mind had cooled after the excitement of the hearing, and freed itself of all bias produced by the high colorings of the advocate, and the eloquence of his appeals; leaving in his memory only the impressions made by the principal facts and the legal reasonings; of which also he took full notes. After this he carefully examined all the cases cited and others bearing on the subject, reviewing and fixing firmly in his mind all the principles of law which might govern the case. By the aid of these principles he proceeded to examine the question on its merits, and to decide accordingly; always first establishing the law in his mind, lest the hardship of the case should lead him to an illegal conclusion."

The condition of the law relating to *patents*, when my father came to the Bench, has already been adverted to. In its principles and practice it was nearly formless in America, and the English decisions were so contradictory and unsatisfactory as to afford little aid. The strong inventive genius of New England began to develop rapidly after the war, and his Circuits were crowded with patent cases. It became his office, therefore, almost to construct the law on this subject, and the system which is now developed is mainly owing to his effort. This law then in England was a mere shuttlecock between equity, with its liberal doctrines, and the common law, with its fear of monopoly. The bias of his mind was towards equity, and he used his best efforts to give to the law a liberal interpretation in favor of inventors, believing that such a course as much benefited the public by the stimulus it gave to the inventive faculties, as to the actual inventor. With this view he sought, on the basis of equity, to fashion a ductile and liberal system, neither too loose to operate with definiteness, nor too rigid to meet the ever-varying aspect of cases, avoiding vagueness on the one side, and formalism on the other. Among the very large number of judgments delivered by him in this department, may be mentioned *Wyeth v. Stone*, (1 Story, R. 273); *Brooks v. Byam*, (2 Story, R. 525, 553); *Washburn v. Gould*, (3 Story, R. 122); *Barrett v. Hall*, (1 Mason, R. 448); *Stearns v. Barrett*, (1 Mason, R. 154); *Earle v. Sawyer*, (4 Mason, R. 1); *Ames v. Howard*, (1 Sumner, R. 482.)

Another important series of cases decided by him was in the kindred department of Copyright. An author's right of property in his book, under the statutes of the

United States, he deemed, by common sense and common justice, to be as perfect as his right to any other product of his labor. The case of *Folsom v. Marsh*, (2 Story R. 100,) may be mentioned as a prominent case in this department. This case for the first time clearly asserts and ably vindicates the doctrine, that an author has an exclusive property and copyright in all manuscripts, papers and letters written by him, whether they are literary compositions, or private letters, or letters of business, unless he unequivocally dedicates them to the public, or to some private person; that the general property, as well as the copyright, descends to his representatives; that the persons to whom they are addressed acquire no right of property in them, and no authority to publish them, unless in cases where the publication becomes necessary to protect the rights of the receiver, or to vindicate his character, and is justified under the circumstances; and that a publication of them for private profit, or amusement, or pique, is an unquestioned violation of copyright. Other important cases are *Emerson v. Davies*, (3 Story, R. 768,) *Gray v. Russell*, (1 Story, R. 11.)

It only remains to speak of one other great department, that of Equity Jurisprudence, in which my father was eminent. In its broad doctrines and liberal spirit he delighted, as the clear noon of the law. Its free, flexible, and yet distinct and practical principles, comported better with the character of his mind, in which the love of Justice and Freedom was native, than the narrow and more technical doctrines of the common law. Equity, in his mind, was a central sun, raying out its principles into every department of the law, and animating all the systems around it, from the nearer system

of Commercial and Natural Law, to the distant system of Real Law. In this department all the generous qualities of his nature found full play, and he pursued its study, with tireless enthusiasm. To its illustration he brought his best powers, and his judgments are as remarkable for their solidity and practical character, as for their free spirit, and exhaustive research. To the united efforts of my father and Chancellor Kent the enlightened system of Equity, which now prevails in this country, is chiefly due. Kent, indeed, led the way, but he found in my father an equal coadjutor. They stood shoulder to shoulder in this work, and divide the honor between them. In the judgments of my father are shown the conscientious caution of Eldon without his dangerous doubts, and the learning, genius, and combining faculty of Hardwicke. Among the most prominent are *Harvey v. Richards*, (1 Mason, R.) in which the authority of a Court of Equity to decree a distribution of intestate property, collected under an administration granted here, the intestate having died abroad, is considered; *Hough v. Richardson*, (3 Story, R. 660,) *Flagg v. Mann*, (2 Sumner, R. 487,) and *Doggett v. Emerson*, (3 Story, R. 700,) which were cases where the Equity doctrines relating to the fraudulent sales are laid down and applied; *Jenkins v. Eldredge*, (3 Story, R. 183, 300, 325,) where a parol trust was set up in contravention of the terms of an absolute deed, opening the whole doctrines of Equity as to parol trusts. This case is also remarkable as showing the luminous power of my father in disentangling most complicated details, weighing very contradictory evidence, and creating order out of a chaos of circumstances. Other important cases are *Veazie v. Williams*, (3 Story, R. 54,

612,) in which the nature of auction sales, and the effect of employing by-bidders and puffers, is fully considered; *Wood v. Dummer*, (3 Mason, R. 309,) in which the doctrines relating to Banks and Banking are considered; *Dexter v. Arnold*, (5 Mason, R. 503, S. C. 3 Sumner, R. 152,) on Mortgages in Equity; and *Tobey v. The County of Bristol*, (3 Story, R. 800,) where the doctrine of specific performance in Equity is discussed. This was the last judgment ever drawn up by my father, and was, in fact, never delivered in Court. It shows how perfect his mind remained to the end of his life.

On the Bench, he was uniformly courteous and urbane. He treated all who came before him, either as counsel, juror, witness, or even criminal, with that kindness which springs from a gentle and affectionate heart. He never presumed upon his position. To the young and inexperienced practitioner, who is so often doomed to have his sensibilities torn by the dull edge of judicial wit, he was peculiarly gracious and assuring. He smoothed for them the rugged ascent of early practice, helped them in their embarrassment, cheered them in their efforts, and had always for them a kind word and an encouraging smile. He was not jealous of disrespect, and feared not to be familiar. But he was always self-possessed and dignified, and guarded the rights of the Bench with great vigilance and firmness. No one ever presumed on his good nature, by offering the least disrespect to the Court, who did not at once receive severe rebuke.

His friend, Charles S. Daveis, Esq., of Portland, says, in a letter to me, dated September 15th, 1846,—

“I hardly know how you will understand me, when I

say, that his annual or biennial coming among us, seemed like something between an avatar and an avalanche; for, it seemed, at first, a coming down upon us with a weight from his judicial power and genius and knowledge, and the prestige that attended them, that would have been felt more heavily, if it had not been so soon relieved, I might say, at once, by the cordiality and warmth with which he greeted his brethren, as he always made them feel, of the Bar; and the animating kindness, with which he invited them to their tasks. There can be no doubt of the impulse and advance he gave to the cause of professional learning among us here, and elsewhere, in its original and accessory sources. His own light in law, and the dawn of the Admiralty, in his own broader doctrine, had preceded him;—but he first opened to us the instructive elements of Equity Jurisprudence, in copious and exciting effusions. We are indebted to him for a sensible advancement in the scale of legal science, and a conscious development of the principles of professional excellence which we must have been behind the age not to have shared in, but of which we should not have felt the full, vivifying influence, without him; nor would the same progress have been made, as I conceive, but under his auspices.

“I cannot refer to those alternations of the spring and fall Circuits, in this district, between this place and Wiscasset, without reckoning them as among the richest and most agreeable hours that professional, social life affords, both *in itinere*, and at our pleasant lodgings, (the widow of an ancient district attorney,) who was fond of having such society and lodgers. Mr. Greenleaf and Judge Sprague can tell you of those times. Judge Ware, and the *cortège* of the District and Circuit Court, enjoyed it rarely. Mr. Orr was then living, whom nobody but Mr. Greenleaf can give you any idea of now. Mr. Longfellow, as he was then in the undiminished vigor of his mind and health, General Fessenden, in his strength, and generosity of soul, and other choice spirits, in the sober and better sense of the term, chiefly from Cumber-

land and Kennebec, were participators, who surrounded the table, or gathered by the fireside at the hours, and on the evenings of adjournment. Mr. Mason and Mr. Webster were sometimes among us, and you can readily conceive, with what spirit and effect, such new parties intervened. Some of our past or present Judges of the State Court, also, Allen, of Gardiner, Deblois, and others, are to be added. These were real *noctes cœnæque*, in the truest rendering of Horace; and in the better strain of Comus,—the Milton strain,—redolent with all the richness of which he, who was always the soul of such a circle, was so lavish, in modes of such variety, and whose social animation and spirit of conversation never flagged, while there was oxygen enough in the atmosphere around to sustain the vital flame.

“ Though you can easily see where the *parole* lay most of the time, yet, no man had less than his share, and every one had his full pay. These, you can well see, were scenes for the ‘pained and softened fancy’ to dwell upon, in long, retrospective vision, (you may remember the touchingly beautiful apostrophe of Curran,) such as the Judge would not have failed to call up of those he outlived; and we are left still, most of us, to call up the Judge. *Hæu, minus est cum reliquis versari!* has been, I do not know how often, in my mind, and I never was more sensible, than since we lost him, of what there was in the melancholy thought, that the wine of life, with us, was on the lees. These were, in truth, among the most sunny passages of the best social and professional intercourse that can exist under such relations. It was only by being among them, that you could have felt how deep and genial an impression he always created; and, what was most remarkable, the untiring and inexhaustible vivacity with which he kept up the power of it, with such a constant flow of good humor, from morning to night, and night almost again to morning.

“ Without enlarging on the more elevated and expansive

points of his character, there was a perfect *bonhomie*, in the best sense of the expression, in his continual intercourse with his professional brethren, and in all the relations, indeed, of social intercourse, and, at all manner of social meetings, in which he was called, either to preside, or bear a part, and from which he was never permitted to escape, always in perfect keeping with what was most germain and genial to the occasion, that was always irresistibly diffusive and captivating. But, there would be no end to the indulgence of this strain of recollection. The only task part would be to undertake to convey it, at second hand, to others than those who would not require any description that could never improve the original impression in their own minds, however pleasing they might find it to have it revived and refreshed. There were a thousand delightful things, of this nature, that passed in his intercourse with us, sometimes in his sittings as well as his risings, with the flashes of thought, and that disappeared about as suddenly, of which it would be impossible to recover any thing more than the most evanescent trace. As to presenting a real reflection or impression of them, I should give up in despair.

“ You may let me indulge myself, however, in the memory of one little incident, giving some idea of the kindness and good humor with which things went along with him, or under his auspices, in the intercourse of the Bar, rather than as affording any material illustration of any thing else upon the records, and which I may take a modest pride in relating, as having, from the first, treasured up the matter faithfully in my mind.<sup>1</sup>

“ You know Mr. Longfellow, whom he loved and regarded very highly, was his classmate. No one was ever more pressing or effective in his mode of presenting a point to the Court, or adroit, in eluding or parrying any objection or

<sup>1</sup> Hon. Stephen Longfellow, of Portland, Maine, father of the eminent poet, Henry Wadsworth Longfellow.



embarrassment to its axiomatic truth and soundness; and he had a most respectful and deferential way of meeting and avoiding any difficulty of that kind coming from the Court. It was his particular 'trick of fence.' It was never his habit, of course, when a question was presented to him by the Judge, touching, and, perhaps, opposing his point or line of argument, to rouse the dignity of the Court, by meeting it with any plump denial or contradiction. Nor had he the habit, which your father used to charge upon General Fessenden, of returning to attack the position of the Court, in a parallel line; but he had a peculiar refinement of his own, which some of us had noted, and all admired. It was this: 'But there is a *distinction*, may it please your honor.' And under the guise of this 'distinction,' which it is unnecessary to say, was sometimes exceedingly thin and undistinguishable, or rather a mere variation of expression, back would come the proposition, that the Court had not been able to adopt, *alter et idem*. This gave rise to an epitaph, penned at the Bar, upon which it would ill become me to bestow any praise, for example, or to this effect:—

Here lies

STEPHEN LONGFELLOW, LL. D., &c.,

Born, &c. Died, &c.

With this *Distinction*,

That *such a man can never DIE*.

"It passed round the Bar, and reached the Bench. Its fame, I understood, extended even to the Law School, and it came, of course, to the knowledge of Mr. Longfellow. But what is most memorable, is, that it did its office. On some occasion, not long after, Mr. Longfellow was pressing his point, as usual, and meeting his snag, 'but, may it please your Honor, there is this dis—,' he hesitated. 'Out with it, Brother Longfellow,' said the Judge, with one of his most gracious and good-humored smiles. But another form was

adopted. I believe it never came again. The epitaph was the death, at least, of the 'distinction.'"

In the disposition of cases he had great tact and energy. Nothing ever lingered and dragged in his Court. He lost no time, and yet never was in a hurry. "*Ohne Hast, aber ohne Rast,*" might have been the motto of his Court. In the hearing of arguments his quickness of comprehension was remarkable. By the time the counsel had stated the facts and read the papers, he had arranged them, classified them, perceived their reciprocal bearings, and anticipated every point. From that moment through the whole trial or argument, the case lay like a map before him. He detected the least incongruity or contradiction. He would in a word refute an argument by stating the bearing of a fact or a cluster of facts which the counsel had carefully shuffled out of the way. He would often represent to counsel in a clearer and more definite form the argument which he was endeavoring to put; often would help him to a new view of the whole case. If I should state in a word the characteristic peculiarity of his mind, I should say it was luminousness. His intellect seemed unconsciously to analyze and recombine. His perception was reasoning. It was impossible to puzzle him. Whatever he looked at he saw through. I am happy to be able to corroborate this remark by the testimony of one so able to judge as Professor Greenleaf. He says,—

"If, among the various excellences of his judicial character, we were obliged to select any one as the leading trait, we might hesitatingly select his uncommon quickness of

comprehension. Some have been as ready, without his accuracy; others as correct, without his readiness. His was the happy combination of both. No man could at a quicker glance catch the entire contents of the page submitted to his perusal; none more readily understand the meaning of the speaker before him; none could sooner comprehend the half-enunciated proposition, and reproduce it to the speaker in more exact terms of his own; no judge could with sharper sagacity discern the precise merits of the cause or question submitted to his judgment. This faculty, said to be dangerous in a magistrate, was tempered by self-discipline and restraint; for in truth he was a patient hearer, never silencing an advocate who had still something to say, and gladly availing himself of every light which might be shed upon the case, even to the humblest twinkling. His judgments are distinguished for their fulness of reasoning and illustration. He was anxious not only to be right, but to be confessedly so. He carefully considered all the discussions at the bar, fairly meeting by argument every point that he overruled, and justifying his own conclusions by the most cogent reasonings and authorities, with persuasive eloquence. Even the losing party has been known to thank the Judge for convincing him that his adversary was perfectly innocent of the wrong, of which he had believed him guilty."

Here I cannot deny myself the pleasure of quoting again from the interesting letter of Mr. Daveis. He says, —

"I have not been without opportunities of observing and apprehending various prevailing characteristics of his mind and demeanor as a Judge upon the bench, such as I might allow myself to recall, and dwell upon; — his patience and gentleness so long as they were virtues, and so long as such qualities could hold out under time and health and the

inevitable attritions of the human spirit, pressures which no man had a greater power of sustaining; the welcoming and inviting, indeed, of all the ministrative means of instruction that industry and learning even in their less ripened fruits could afford; the kind habits of encouragement and attentions which were most felt where they were most wanted, listening so long as it could be of any use to him, and at the same time suspending his judgment so long as there was space for doubt or danger of error, and continuing his mind open so long as there was a chance of obtaining further illumination. To this add the generosity of his individual awards and commendations, fully to the measure of merit and often in anticipation of its actual desert; his obliging acknowledgments in regard to all the lights that had been lent him, which he reflected back often with superadded force and brilliancy; and his extraordinary quickness of perception and almost intuitive survey of the field before him.

“ All these things have been said often. Yet no one, however so little of an expert, would recognize such a half sketch without taking into view, with the ready facility of his comprehension, his rapid faculty of selecting among the prominent considerations, and seizing upon the strong and salient points of a case or question as they developed themselves to him; his power of seeing things, as it were, at a glance in their true relief, and of taking a broad, clear, and leading view of a subject, never losing sight of any thing that belonged to it, and exercising his mind upon it among its proper elements, until it settled upon the decisive grounds of determination. All this was done sometimes with such a marvellous rapidity as to seem to be (to use favorite expressions of his own) *uno intuitu*, or *uno ictu*, or to add another, *uno habitu*. And among the most remarkable powers of his mind, adding the force of discipline to nature, (one on which I have reason to think he rather prided himself,) was that of despatching the topics of an argument as they were discussed, and disposing of them as he went along. This may be re-

garded as one of the faculties of his mind, resolving itself into that predominating characteristic, the prevailing polarity and rectitude, almost always unerring, of his judgment, which to my mind was the most observable and admirable quality of his intellectual constitution. This, in support of his learning as much as supported by it, will be found to lie, as it has been felt to be, at the foundation of his judicial fame, and to sustain all the columns already built, or the monuments that may be erected upon it. And I repeat, that neither his learning, his genius, or his eloquence, (and I have seen his countenance when it was lighted in the glow of his mind upon the bench, with an illumination that seemed almost divine,) ever struck me with more solid and sincere admiration. In all the exhibitions of his intellectual power, upon subjects demanding determination, it was striking also to observe the energetic and harmonious coöperation and combination of his mind and will, in their state of original, cultivated, and disciplined activity. 'Sufficient for the day,' was what he often said to whatever stood in the way of a sound general principle or a wholesome practical rule. *Ut res magis valeat*, was the impulse by which his determination was governed, when the predominant point was presented, to which all other things had to give way. This maxim, if I mistake not, will not only serve to illustrate and unlock various of his '*splendida arbitria*,' but to explain, also, the energy with which he vindicated his general doctrines of jurisdiction, and gave effect to his cardinal principles of judicial action."

Yet he was a patient listener, and although when suffering under the detected repetitions of some tedious advocate, his face would sometimes show the weariness of spirit with which he listened, expressions of impatience very rarely escaped him. On one occasion, after a long and prosy argument, a new proposition was brought forward as law. "That point has been repeatedly decided

the other way by this Court," said my father. "Nevertheless," answered the counsel, "I consider that my duty to my client requires me to argue it." "Very well," returned my father, "you can go on and argue it, if you think your duty requires it. I would not restrict you in the performance of your duty; but I made up my mind on the point and decided it twenty years ago, and have never seen any reason since to change it." He used, in alluding to the protracted and wearisome arguments to which he was sometimes subjected, to tell with glee the story, that Chief Justice Marshall on one occasion, when a very pompous and tedious advocate was arguing a case before the Supreme Court, and going back to the undisputed and preadamite rules of the law, interrupted the course of his argument by saying,—"Mr. C——, I think this is unnecessary. There are some things which a Court constituted as this is, may be presumed to know."

Among his most able efforts on the Bench were his public charges to the jury. In these, his argumentative capacity, his luminous power of arranging and balancing evidence, his acuteness in separating the accidental and sophistical from the essential, his eloquence of expression and his readiness and pliancy of mind were admirably displayed. It has been objected, that he sometimes assumed the province of an advocate rather than a judge in his mode of presenting a case to the jury. But such an objection would be allowed by few. There are two modes of charging a jury; one by stating the facts and the law in a very general manner; the other by collating carefully the arguments on both sides, so as to show their relative bearings, and by applying the law to the

actual facts. The latter course was adopted by my father. His charges were full and minute in the recapitulation of arguments; and in his comments on the evidence he brought out fully all coincidences and contradictions. But he never argued a case for either side, and was particularly scrupulous always to present both views of every proposition. Whether it is not the duty of a judge to see that the jury are not improperly influenced by declamatory phrases and ambiguous law, is a question which different minds may differently answer. My father looked upon the trial by jury as intended to subserve the substantial ends of justice, and not to afford an opportunity for ingenious counsel to seduce twelve men into a wrong verdict. And in his charges he aimed to prevent all misapprehension created by over influence, or in any other way, to place the case in a clear, simple light, and to leave the decision wholly to the jury.

In the administration of the criminal law his dignity and humanity were eminently conspicuous. Every mitigation of the condition of prisoners, and every privilege he could legally allow, he was forward to give, and when called on to pronounce sentence, he did it with manifest pain. In him the quality of mercy was not strained. He leaned towards it naturally, desiring always to discover the mitigating circumstances of every crime, and to season justice with clemency. From this portion of his duties he shrunk with great dislike, and a capital trial always impaired his health. In the department of Criminal Law his labors are very distinguished. The Crimes Act, as well as other acts of Congress relating to the same subject, were drawn up by him, as has already appeared. In his charges to the Grand Jury the Crimi-

nal Law was thoroughly discussed and commented on. Among his prominent contributions to this department are the dissentient opinion in *Bevans's case*, (3 Wheat. R. 336,) which, in a modified form, appears in the Appendix to Wheaton's Reports as a note on the Criminal Law, and the judgment pronounced in the case of *Gibert v. The United States*, (2 Sumner, R. 22,) in refusing a motion for a new trial in the case of the crew of the schooner *Panda*, who were convicted for piracy, and afterwards executed in Boston in the year 1835. All who remember that trial will bear witness to the patience, caution, and ability with which it was conducted, and to the prostration of my father's health which it occasioned. While it was in process he scarcely eat or slept, and when off the Bench, was in a constant state of agitation and excitement.

The following interesting anecdote, which I find in the Appendix to an anonymous volume of Poems lately printed in Boston, illustrates the spirit of humanity in which he administered the Criminal Law:—

“I was in the United States Court while a case of alleged murder was tried. The prisoner, a young woman, had arrived in New York from Ireland, in the last days of pregnancy, alone, destitute, friendless. She got into a wretched room, where her child was born. Soon after, she went aboard one of the Sound steamers, as a deck passenger, with her new-born child. All night she walked the deck in the cold of late autumn, without food or shelter, utterly uncared for and unknown.

“In the morning, the child was missing. She said it had died of cold and hunger, and that she had thrown it overboard. She was arrested on landing, and tried for murder. The testimony went to show, that under the circumstances



the reported death was highly probable; and especially that the state of mind of the prisoner, situated as she was,—a state very likely to exist in the condition produced by recent delivery, and amid such appalling circumstances,—was one so near to insanity, that she could not be held legally responsible for what she might have done. It was also showed how directly such entire destitution of all that care, nay, of any portion of it, which her recent confinement demanded, went to produce a state of mind which would destroy responsibility.

“The testimony in, the Judge consulted with the District Attorney on the question of letting the case go to the Jury upon the evidence, without argument, if the counsel for the prisoner would consent to such a course. This was at once agreed to, and the Judge proceeded to his charge. The Jury were about to rise, when the Judge begged them to omit that form; and they kept their seats. The law and the evidence were now stated in the most lucid and touching summing-up I have ever heard. I have never forgotten, and I trust I shall never forget, that charge. So clear was it concerning the whole demands of justice,—so full in regard to the facts and the principles established by the testimony,—and such were the views of the moral claims of that wretched, lone, deserted creature at the bar, which crowned the charge, that you could not refrain from paying reverence, and feeling love, for him in whom mercy and justice had embraced each other, and humanity found its argument and its illustration.

“The Jury did not leave the court room. They held short consultation, when the foreman arose, and said the verdict was ready. The usual forms were gone through with in the simplest manner, and a verdict of “Not guilty” was rendered.

“The case did not end here. The witnesses went to the Marshal’s office to receive their fees. They left them in his deputy’s hands, to be given to the helpless stranger who had just been acquitted. Kindness still followed her. One of

her counsel took her to his own house, that there she might receive that protection and care which her helplessness so earnestly pleaded for, and her wants made so welcome.

“Was it not beautiful to see old Law forego for a moment its age and its technical dignities, and, with the infinite grace of a little child, show to the world around it, that love was at its bosom still; that it had confidence in humanity; and that, from the most helpless, feeblest of its forms, its ministers would not turn away?”

Thus familiarly he moved over the various departments of the law, achieving eminence in all. He was not learned in some and ignorant in others, but so equal was his knowledge in all, that it would be difficult to say in which he excelled. There are instances of judges who stand beside him in some single department, but it may safely be affirmed that no one ever obtained such deserved eminence in so many. To him may be applied his own eloquent eulogy upon Mansfield:—“England and America, and the civilized world, lie under the deepest obligations to him. Wherever commerce shall extend its social influences, wherever justice shall be administered by enlightened and liberal rules, wherever contracts shall be expounded upon the eternal principles of right and wrong, wherever moral delicacy and juridical refinement shall be infused into the municipal code, at once to persuade men to be honest, and to keep them so, wherever the intercourse of mankind shall aim at something more elevated than that grovelling spirit of barter in which meanness, and avarice, and fraud, strive for the mastery over ignorance, credulity, and folly, the name of Mansfield will be held in reverence by the good and the wise, by the honest merchant, the enlightened

lawyer, the just statesman, and the conscientious judge.”<sup>1</sup>

As a teacher, his powers were peculiarly rare and felicitous. He loved his vocation. He knew no sweeter employment than to develop and expound to his pupils those lofty principles of morals and justice for which he had so pure an enthusiasm. In their sanguine hopes, and thirst for knowledge, he beheld his own youth reflected, and in pouring forth to them from the full fountain of his learning he “breathed a second spring.” His extraordinary fluency, his warm and sympathetic nature, and his great acquirement, all conspired to fit him for a teacher. Knowledge radiated from him, into the minds of all around. The spirit in which he taught was beautiful. His side was that of justice, truth, right. He strove to rouse in his pupils an ambition for pure and noble aims. At the threshold of manhood he made them swear fealty to morals and war to falsehood upon the altar of the law. He taught by his character as well as by his words. He was fond of contrasting the mean huckster and trickster in the law with the shining examples of the distinguished men who had been his contemporaries, and of urging upon his pupils, that no victory was worth winning, unless it could be won honorably.

His lecture-room was never dull. Whatever might be the subject, it was treated with such fire and earnestness, such warmth and geniality, that no one could listen without interest. His room was always crowded. There was in his manner the utmost *abandon*. No sub-

<sup>1</sup> Address before the Suffolk Bar.

ject was so trite and stale that it did not bloom afresh at his touch. Hour after hour, year after year passed away, but his enthusiasm was perennial. In the full stream of his knowledge, his heart kept throbbing like a tide. His brother professor, Mr. Greenleaf, thus speaks of him in the lecture-room : —

“As an instructor in jurisprudence, he never lost sight of his position as a judge, before whom the subjects of his lectures might again come under consideration. And while every topic of settled law was discussed in the lecture-room with his abundant learning and happy freedom, he carefully refrained from expressing an opinion upon open questions, and still more upon cases stated to him. Indeed, his sagacity in distinguishing between a real and a fictitious case was so well known, that in this way he was rarely approached. In his statements of the existing law, he was remarkably clear and exact; copious and striking in his illustrations; rich in anecdote and historical reminiscence; and familiar with the peculiar characters of all the Judges in Westminster Hall, to whose judgments we are accustomed to refer. You, my pupils, and all who have had the privilege of sitting at his feet, will attest his unwearied patience and kindness in answering the various inquiries of the student; the native delight with which he expatiated upon the great doctrines he expounded, unconscious of the waning hour; his contagious enthusiasm, inspiring all around him with love for the science, and cheering onward the most sluggish and disheartened to new vigor in the course.”

The winged words, on which these teachings were borne, have fled away, but the seeds they planted in the hearts of those who heard them, are growing yet, and bearing good fruit to this country and the world.

But great as were his gifts of intellect and learning,

they were more than equalled by the purity and beauty of his character. His speeches at the forum, his charges on the Bench, his literary and juridical works,—all his triumphs of fame,—fade away, when I remember him in our home. I see not the laurels on the brow, for the spiritual halo above them. If the task be difficult to represent him in his public phase, how much more difficult to do justice to him in his domestic life. He was the sunshine of our family circle. Forgetful of himself, yet mindful of the least interest or pleasure of others; self-denying when the sacrifice was unknown and unappreciated; thoroughly unselfish even in the details of life; generous of kind acts and expressions; satisfied with any portion of the good of daily life which might fall to him; the first to surrender his own wishes to the most careless whim of another,—joyous, lively, beaming. So was he every day and all day. His temper had the same equipoise as his mind. It was never darkened by gusts of passion, or clouded by glooms of sulkiness. He was neither whimsical nor moody; his spirits were not subject to depressions or excitements; the pressure of business did not make him irritable or peevish, but on all occasions he was cheerful, buoyant, sunny. His temper did not, like that of many over-worked men, rise every morning in a cloud and clear away with the excitement of the day. Its morning and its evening twilight were alike clear. To the end of life he was a boy in enthusiasm and spirits. His was

“The sunny temper bright where all is strife,  
The simple heart that mocks at worldly wiles,  
Light wit that plays along the calm of life,  
And stirs its languid surface into smiles.

The happy, grateful spirit that improves,  
And brightens every gift by fortune given,  
That wander where it will with those it loves,  
Makes every place a home, and home a heaven."

Honorable Josiah Quincy, in a letter addressed to me, and dated August 20th, 1851, beautifully says of him,—

"His memory is bound to my affections by cords, which death only can sever. Great as were your father's intellectual powers, those which had their origin in his heart were still greater. His manners were so courteous; his spirit in private society was so gentle; his conversational powers so extraordinary; the extent of his acquirements so wide; his knowledge so various and thorough; the readiness and even profusion with which he bestowed on his friends his intellectual possessions, at their call so great, that they rendered him to his intimates intensely interesting and endearing. My connection and acquaintance with him I regard as among the most happy circumstances of my life."

His love of order was a very active principle. It expressed itself, externally, in the careful disposition of his books, and papers,—for each of which there was a specific place, into which he returned it, scrupulously, after using it,—so that he could find them at once, even in the dark; in the disposition of his time, to each hour of which was assigned its appropriate duty; in the regularity of his habits; and in his careful punctuality in fulfilling his engagements at the exact time and place appointed. Intellectually, it expressed itself in the logical order and system in which he arranged his thoughts, or developed his subject, in discourse or written composition. In a higher grade, it exhibited itself

in his anxiety to place every person in his proper sphere, so as to enable him fully to develop his nature ; and, in its highest phase, it took the form of love of justice and of moral law. To put the world in order, to arrange contradictory and confused elements into a harmonious system, to fix the law upon its true moral foundations, to clear it of its confusion, and purge it of its defects, constituted the main end of his thoughts. He had a hatred of all wrong, oppression, and falsehood, because they were out of the divine law of order. No selfish desire of personal advancement, no low ambition prompted his energies ; but a pure desire to bring about a right condition of things, and to establish society according to right and law. "Honest" and "straightforward" were his favorite epithets for whatever pleased him.

A more generous man never lived. His was the open palm. He was forward to give, seeking opportunities, and originating plans of charity. Silently and secretly his unremembering and unostentatious charity distilled, like the dew, its blessing to the poor and needy, asking not even the reward of gratitude. His charity did not stop with his purse. He gave away freely of his labor and service, of his learning and thought. No envy or jealousy of appropriation ever checked his generosity. He had even a higher charity than this, — the charity which can forgive injuries, and overlook faults. Something he found to praise in all. He cherished animosity to no living being.

In conversation, his powers were very great. It was not epigrammatic, condensed, witty, but abundant, genial, continuous, like a fountain, always fresh and bubbling over. It was full of bright remark, and yet, it was

rather characterized by kindliness and gayety of spirits, than by brevity and point. On ordinary occasions, its tone was that of vivacity and playfulness; but when he became interested, it rose into eloquence, without losing its simplicity. He loved to indulge in personal reminiscences of the prominent men he had known, and was of anecdotes relating to politics and persons; but he disliked personal satire, and never sacrificed a victim to a *bon-mot*. He relished humor, and loved a jest; and his laugh was so inspiring and contagious, that it could not be resisted. He was sometimes too profuse in conversation; yet, so refreshing was its abundance, so full of thought, and so full-souled and hearty, that it never wearied. And if any one ever felt that he had usurped too much, it was only after all was over, in retracing what had been said by others. In richness and fulness, it resembled the conversation of Alexander Von Humboldt, more than that of any other man I ever saw. He never tried to force the attention to a point on which he could shine. He never talked for display, but rather for enjoyment. All that he said, was delivered

— “in such apt and gracious words,  
That younger ears played truant at his tale,  
And older hearings were quite ravished,  
So voluble and sweet was his discourse.”

Goethe's description of Alexander Von Humboldt, as stated by Eckerman, in his conversations with Goethe, might have been drawn from my father. “Such many-sidedness I have found nowhere else. Whenever you call upon him you find him at home; everywhere ready to lavish upon you the intellectual treasures he has



amassed. He is like a fountain with many pipes ; you need only get a vessel to hold under it, on any side refreshing streams flow at a mere touch." Nor did the resemblance between Alexander Von Humboldt and my father stop here. They were similar in person and manner, in the activity of their physical and mental movements, in their fondness for society, in their constancy of labor, in their variety of knowledge, their fulness of conversation, and their gentleness of nature. Of all the persons I ever met, Alexander Von Humboldt reminded me most of my father. Nor am I alone in this parallel. It has been made by others.

He loved to talk with the common people. Always went out to have "a dish of discourse" with the miller when he brought meal and grain for the horses, or with the farmer who brought the hay, or any tradesmen or mechanics who came to the house. In the omnibus he would at once enter into conversation with his neighbor, whoever he was, whether he knew him or not, and soon engage the interest of all the passengers. In travelling by stage-coach, he made friends with all about him, entering into their interests with the greatest simplicity, and assuming their tone. Once on one of his Circuits, he mounted the coachman's box to enjoy the country, and there found a common man, with whom he began to talk. His companion becoming interested, beguiled the way with anecdotes of himself and his personal affairs, and gave a long and detailed account of family matters. When the coach stopped, he invited my father to "take a drink." Off they jumped, when some gentleman addressed my father as "Judge Story," to the surprise of his companion, who,

in recounting the story, finished by saying, "You see he knew all about farming matters and the country so well, that I thought he was a farmer, and one of us, and had been telling him all sorts of trash about myself. But when I heered him called Judge Story, I felt jest as if I could have slinked through the leetlest keyhole in the univarse."

His spirit was gay and happy, and his temper amiable. No sting of sarcasm ever lurked in his language. He was always sympathetic, never disputative or antagonistic. What the Germans call "*gemüthlichkeit*," a word for which there is no English expression, peculiarly belonged to him. There was a sweet attractiveness in all he said and did, which won by a secret charm, and his face and speech had an inward light like Titian's pictures. Of his conversation nothing remains, and it is hopeless to attempt to convey an idea of the evanescent gleams of humor, feeling and grace that glowed through it. I have been able to preserve only a few illustrations of it.

Mr. Everett, in a note to me dated September 1st, 1851, gives the following anecdote:—

"At the dinner at Salem in honor of good old Dr. Holyoke's birth day in 1828, your father, who did the duties of the chair for Dr. Holyoke, held up some ancient relics to the company, and among them an earthen jug, which he said 'had come over with Governor Endicott.' I interrupted him with the question, 'Whether it came over full or empty.' Your father answered, without a moment's hesitation, 'Both full and empty; for the moment it was filled it was emptied, and the moment it was emptied it was filled again; and that was the way it came over.'"

N. J. Bowditch, Esq., in a letter to me, says of my father, —

“I recollect perfectly seeing him at the church on the last commencement week which he attended. His animated countenance and cheerful smile seem still before me. I was told, that as he was leaving the church in the rain, he noticed one of the Governor’s aids, who seemed to shrink from exposing himself, and playfully tapping him on the shoulder, he said, ‘What, a soldier, and afraid.’”

His niece, Miss E. A. Story, describing a few days spent at our house, says, —

“We had a most delightful visit. The Judge was so sunny and chatty and attentive, that we prized every moment passed there. He would praise his ham regularly at breakfast as ‘right honest ham,’ and offer it to us saying, — ‘I will cut you a slice so thin that you can read a newspaper through it, and so transparent that through it you might see Ossian’s witches dancing, as he saw them through the moon-beams.’”

On one occasion, when my father was travelling to Washington in company with Mr. Greenleaf, the coach stopped in the evening at a little roadside inn for the purpose of baiting the horses. The passengers descended, and entering the bar-room, where were collected the hangers-on of the place, seated themselves around the stove to wait till the coach should be ready. While they were thus waiting, an old negro, with a shining, ebony face, came in, bringing his fiddle, which, in hopes of gaining a few pence, he began to play. Pas-

sengers and loungers at once catching the spirit of the fiddle, got up a dance, and shuffled up and down the sanded floor, while the fiddler grinned in anticipation of his pence, and played faster and faster. Suddenly the coach was announced, and at once all the dancers hurried off without taking any heed of the fiddler, or paying him a cent for the amusement he had given. My father, however, observed this, and after watching him sitting alone chopfallen and disconsolate in the corner, until all were gone but Mr. Greenleaf and himself, went up to him and putting a much larger sum into his hands than the poor negro had hoped from all, said to him: "My friend, it used to be the rule that 'he who dances must pay the fiddler,' but as the case seems to be reversed here, I suppose that those who *don't* dance must pay, 'or what will become of the fiddler?'"

Chancellor Kent, in a letter to me dated May 26th, 1846, says,—

"I was always (and it could not well have been otherwise) charmed with Judge Story's affability, exuberance of learning, and unaccountable powers of conversation. I recollect I was deeply and wonderfully struck, when, in 1836, I went with Mrs. Kent and some others to call on him, and he took us over the romantic and sacred grounds of Mount Auburn, and poured forth the rich profusion of his poetical and eloquent genius and impassioned and pathetic feelings with a force and beauty that never were surpassed. I can never forget that ramble."

He never assumed the airs of a great man; never played Sir Oracle; but was simple, unostentatious, and even *naïve* in his manners and habits. He was not

afraid of being thought undignified, for he had in him that true dignity, which can afford to leave out of consideration the petty formalities and fashions of an artificial dignity. In the best and highest sense of the word, he was a gentleman, — a Christian gentleman, — whose courtesy was bred of kind feelings, and not of artificial rules. His manners were bland, affable, and engaging, neither severe nor trifling, neither coarse nor flattering, but genuine and frank.

“He joined  
Each office of the social hour  
To noble manners, as the flower  
And native growth of noble mind.”

His kindness of feeling extended to all persons, and he was, therefore, always polite. To dumb creatures he was kind and considerate, and indignant at any ill usage of them. His sportive nature showed itself in the nicknames, which, in parody of the American fondness of titles, he gave to his horses and dogs; as, “The Right Honorable Mr. Mouse,” or “Colonel Roy.”

His kindness and affability to the young were very great. He had a singular faculty of attracting them. He entered into all their feelings and interests and pleasures, with sympathy. When in their company, he was not only among them, but of them. He delighted to jest and play at wit and raillery with them, to tease them good-naturedly about their flirtations and sentimentalities, and was always inventing some surprise or new plan for their amusement. He was always a favorite with them. They flocked round him wherever he went, and, daily, he might be seen about the College, the centre of a circle of

youths, laughing and joking and talking with infinite zest.

In his religious tenets, he was a Unitarian. He thought more of a good life than a creed, and judged of man's faith by the fruits it bore. He was wholly free from sectarianism, bigotry, and proselytism. He never sought to shake the belief of any man in his own dogmas, believing them to be the mere metaphysics, not the realities of religion. He was desirous that Christians of all denominations should be represented in the University at Cambridge, and that the question as to their appointment should be in respect to their qualifications, not to their creed. He believed in the inspiration and the doctrines of Christ, in the immortality of the soul, in the unity of God, and he often intimated a design to write a work, in which the rules of legal evidence should be applied to the facts of the Gospel narration, and the question of its authenticity argued as before a court of justice. His religious faith was not a dry and barren belief, but an ever-living principle, animating every act and thought. In his bereavements, he found in it consolation and support. In his happiness, it was never out of sight. He lived a truly religious life. He died in the full faith of a renewed and purified existence beyond the grave.

# APPENDIX.

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## NO. I.

### MR. SUMNER'S TRIBUTE TO MY FATHER.

THE following touching and beautiful tribute to my father's memory, from the pen of his intimate and cherished friend, Charles Sumner, Esq., appeared in the Boston Daily Advertiser, September 16th, 1845.

#### HON. JOSEPH STORY.

I have just returned from the last sad ceremony of the interment of this great and good man. Under that roof, where I have so often seen him in health, buoyant with life, exuberant in kindness, happy in family and friends, I gazed upon his mortal remains, sunk in eternal rest, and hung over those features, to which my regards had been turned so fondly, and from which even the icy touch of death had not effaced all the living beauty. The eye was quenched, and the glow of life extinguished; but the noble brow seemed still to shelter, as under a marble dome, the spirit that had fled. And is he, indeed, dead, I asked myself; he whose face was never turned to me, except in kindness; who has filled the civilized world with his name; who has drawn to his country the homage of foreign nations; who was of activity and labor that knew no rest; who was connected by duties of such various kinds, by official ties, by sympathy, by friendship and love, with so many circles; who, according to the beautiful expression of Wilberforce, "touched life at so many points,"—has he, indeed, passed away? Upon the small plate on the coffin was inscribed, "Joseph Story, died September 10th, 1845, aged 66 years." These few words might apply to the lowly citizen, as to the illustrious Judge. Thus is the coffin-plate a register of the equality of man.

At the house of the deceased we joined in religious worship. The Rev. Dr. Walker, the present head of the University, in earnest prayer, commended the soul of the departed to God, who gave it, and invoked a consecration of their afflictive bereavement to his family and friends. From this service we followed the body, in mournful procession, to the resting-place which he had selected for himself and his family, amidst the beautiful groves of Mount Auburn. As the procession filed into the Cemetery I was touched by the sight of the numerous pupils of the Law School, with uncovered heads and countenances of sorrow, ranged on each side of the road within the gate, testifying by this silent and unexpected homage their last respects to what is mortal in their departed teacher. Around

the grave, as he was laid in the embrace of the mother earth, was gathered all in our community that is most distinguished in law, in learning, in literature, in station; the Judges of our Courts, the Professors of the University, surviving classmates of the deceased, and a thick cluster of friends. He was placed among the children taken from him in early life, whose faces he is now beholding in heaven. "Of such is the kingdom of heaven," are the words he had inscribed over their names, on the simple marble which now commemorates alike the children and their father. Nor is there a child in heaven, of a more childlike innocence and purity, than he, who, full of years and worldly honors, has gone to mingle with these children. Of such, indeed, is the kingdom of heaven.

There is another sentence, inscribed by him on this family stone, which speaks to us now with a voice of consolation. "Sorrow not as those without hope," are the words which brought a solace to him in his bereavements. From his bed beneath he seems to whisper them among his mourning family and friends; most especially to her, the chosen partner of his life, from whom so much of human comfort is apparently removed. He is indeed gone; but we shall see him once more forever. In this blessed confidence, we may find happiness in dwelling upon his virtues and fame on earth, till the great consoler Time shall come with healing on his wings.

From the grave of the Judge, I walked a few short steps to that of his classmate and friend, the beloved Channing, who died less than three years ago, aged sixty-three. Thus these companions in early studies—each afterwards foremost in the high and important duties which he assumed, pursuing divergent paths, yet always drawn towards each other by the attractions of mutual friendship,—again meet and lie down together in the same sweet earth, in the shadow of kindred trees, through which the same birds shall sing their perpetual requiem.

The afternoon was of unusual brilliancy, and the full-orbed sun gilded with mellow light the funereal stones through which I wound my way, as I sought the grave of another friend of my own, the first associate of the departed Judge in the duties of the Law School,—Professor Ashmun. After a life crowded with usefulness, he laid down the burden of ill-health which he had long borne, at the early age of thirty-three. I remember listening, in 1833, to the flowing discourse which Mr. Justice Story pronounced in the College Chapel, over the remains of his associate; nor can I forget his deep emotion, as we stood together at the foot of the grave, while the earth fell, dust to dust, upon the coffin of his friend.

Wandering through this silent city of the dead, I called to mind those words of Beaumont on the tombs in Westminster:—

Here 's an acre sown indeed,  
With the richest, royall'st seed  
That the earth did e'er suck in,  
Since the first man died of sin,  
Here are sands, ignoble things,  
Dropt from the ruined sides of kings.

The royalty of Mount Auburn is of the soul. The kings that slumber there were anointed by a higher than earthly hand.

Returning again to the grave of the departed Judge, I found no one but the humble laborers, who were then smoothing the sod over the fresh earth. It was



late in the afternoon, and the upper branches of the stately trees that wave over the sacred spot, after glistening for a while in the golden rays of the setting sun, were left in the gloom which had already settled on the grass beneath. I hurried away, and as I reached the gate the porter's curfew was tolling, to forgetful musers like myself, the knell of parting day.

As I left the consecrated field, I thought of the pilgrims that would come from afar, through long successions of generations, to look upon the last home of the great Jurist. From all parts of our own country, from all the lands where law is taught as a science, and where justice prevails, they shall come to seek the grave of their master. Let us guard, then, this precious dust. Let us be happy, that though his works and his example belong to the world, his sacred remains are placed in our peculiar care. To us, also, who saw him face to face, in the performance of all his various duties, and who sustain a loss so irreparable in our own circle, is the melancholy pleasure of dwelling with household affection upon his transcendent excellences.

His death makes a chasm which I shrink from contemplating. He was the senior Judge of the highest Court of the country, an active Professor of Law, and a Fellow in the Corporation of Harvard University. He was in himself a whole triumvirate; and these three distinguished posts, now vacant, will be filled, in all probability, each by a distinct successor. It is, however, as the exalted Jurist, that he is to take his place in the history of the world, high in the same firmament whence beam the mild glories of Tribonian, of Cujas, of Hale, and of Mansfield. It was his fortune, unlike many who have cultivated the law with signal success on the European continent, to be called as a Judge practically to administer and apply it in the actual business of life. It thus became to him not merely a science, whose depths and intricacies he explored in his closet, but a great and god-like instrument, to be employed in that grandest of earthly functions, the determination of justice among men. While the duties of the magistrate were thus illumined by the studies of the Jurist, the latter were tempered to a finer edge by the experience of the bench.

In attempting any fitting estimate of his character as a Jurist, he should be regarded in *three* different aspects; as a Judge, an Author, and a Teacher of jurisprudence, exercising in each of these characters a peculiar influence. His lot is rare who achieves fame in any single department of human action; rarer still is his who becomes foremost in many. The first impression is of astonishment that a single mind, in a single life, should be able to accomplish so much. Independent of the incalculable labors, of which there is no trace, except in the knowledge, happiness, and justice which they helped to secure, the bare amount of his written and printed works is enormous beyond all precedent in the annals of the common law. His written judgments on his own circuit, and his various commentaries, occupy *twenty-seven* volumes, while his judgments in the Supreme Court of the United States form an important part of no less than *thirty-four* volumes more. The vast professional labors of Coke and Eldon, which seem to clothe the walls of our libraries, must yield in extent to his. He is the Lope de Vega, or the Walter Scott of the common law.

We are struck next by the universality of his juridical attainments. It was said by Dryden of one of the greatest lawyers in English history, Heneage Finch,

Our law, that did a boundless ocean seem,  
Were coasted all and fathomed all by him.

But the boundless ocean of that age was a *mare clausum* compared with that on which the adventurer embarks in our day. We read, in Howell's Familiar Letters, the saying of only a few short years before the period of Finch, that the books of the common law might all be carried in a wheelbarrow. To coast such an ocean were a less task than a moiety of his labors whom we now mourn. Called to administer all the different branches of law, which are kept separate in England, he showed a mastery of all. His was Universal Empire; and wherever he set his foot, in the wide and various realms of jurisprudence, it was as a sovereign; whether in the ancient and subtle learning of real law; in the criminal law; in the niceties of special pleading; in the more refined doctrines of contracts; in the more rational system of the commercial and maritime law; in the peculiar and interesting principles and practice of Courts of admiralty and prize; in the immense range of chancery; in the modern but important jurisdiction over patents; or in that higher region, the great themes of public and constitutional law. There are judgments by him in each of these branches, which will not yield in value to those of any other Judge in England or the United States, even though his studies and duties may have been directed to only one particular department.

His judgments are remarkable for their exhaustive treatment of the subjects to which they relate. The common law, as is known to his cost by every student, is to be found only in innumerable "sand-grains" of authorities. Not one of these is overlooked in his learned expositions, while all are combined with care, and the golden cord of reason is woven across the ample tissue. Besides, there is in them a clearness, which flings over the subject a perfect day; a severe logic, which, by its closeness and precision, makes us feel the truth of the saying of Leibnitz, that nothing approached so near the certainty of geometry, as the reasoning of the law; a careful attention to the discussions at the bar, that the Court may not appear to neglect any of the considerations urged; with a copious and persuasive eloquence which invests the whole. Many of his judgments will be landmarks in the law; they will be columns, like those of Hercules, to mark the progress in jurisprudence of our age. I know of no single Judge who has established so many. I think it may be said, without fear of question, that the Reports show a larger number of judicial opinions, from Mr. Justice Story, which posterity will not willingly let die, than from any other judge in the history of English and American law.

But there is much of his character, as a Judge, which cannot be preserved, except in the faithful memories and records of those whose happiness it was to enjoy his judicial presence. I refer particularly to his mode of conducting business. Even the passing stranger bears witness to his suavity of manner on the bench, while all the practitioners in the Courts, over which he presided so long, attest the marvellous quickness with which he habitually seized the points of a case, often anticipating the slower movements of the counsel, and leaping, or, I might almost say, flying to the conclusions sought to be reached. Napoleon's

perception in military tactics was not more rapid. Nor can I forget the scrupulous care with which he assigned reasons for every portion of his opinions, showing that it was not *he* who thus spoke with the voice of authority, but the *law*, whose organ he was.

In the history of the English Bench, there are but two names with combined eminence as Judge and as Author,—Coke and Hale;—unless, indeed, the Orders in Chancery, from the Verulamian pen, should entitle Lord Bacon to this distinction; and the judgments of Lord Brougham should vindicate the same for him. Blackstone's character as a Judge is lost in the fame of the Commentaries. To Mr. Justice Story belongs this double glory. Early in life, he compiled an important professional work; but it was only at a comparatively recent period, after his mind had been disciplined by the labors of the Bench, that he prepared those elaborate Commentaries, which have made his name a familiar word in foreign countries. They, who knew him best, observed the lively interest which he took in this extension of his well-earned renown. And truly he might; for the voice of distant foreign nations seems to come as from a living posterity. His works have been reviewed with praise in the journals of England, Scotland, Ireland, France, and Germany. They have been cited as authorities in all the Courts of Westminster Hall; and one of the ablest and most learned jurists of the age, whose honorable career at the Bar has conducted him to the peerage, Lord Campbell, in the course of debate in the House of Lords, characterized their author as "The first of living writers on the law."

To complete this hasty survey of his character as a Jurist, I should allude to his excellencies as a *teacher* of law, that other relation which he sustained to jurisprudence. The numerous pupils reared at his feet, and now scattered throughout the whole country, diffusing, each in his circle, the light which he obtained at Cambridge, as they hear that their beloved master has fallen, will feel that they individually have lost a friend. He had the faculty, rare as it is exquisite, of interesting the young, and winning their affections. I have often seen him surrounded by a group,—the ancient Romans would have aptly called it a *corona* of youths,—all intent upon his earnest conversation, and freely interrogating him on any matters of doubt. In his lectures, and other forms of instruction, he was prodigal of explanation and illustration; his manner, according to the classical image of Zeno, was like the open palm, never like the clenched fist. His learning was always overflowing, as from the horn of abundance. He was earnest and unrelaxing in his efforts, patient and gentle, while he listened with inspiring attention to all that the pupil said. Like Chaucer's Clerk,

And gladly wolde he lerne, and gladly teche.

Above all, he was a living example of a love for the law,—supposed by many to be unlovely and repulsive,—which seemed to grow warmer under the snows of accumulating winters; and such an example could not fail, with magnetic power, to touch the hearts of the young. Nor should I forget the lofty standard of professional morals which he inculcated, filling his discourse with the charm of goodness. Under such auspices, and those of his learned associate, Professor Greenleaf, large classes of students of law, larger than any in England or America, have been

annually gathered in Cambridge. The Law School is the golden mistletoe ingrafted on the ancient oak of the University;

Talis erat species auri frondentis opaca  
Illice.

The deceased was proud of his character as Professor. In his earlier works he is called on the title-page, "Dane Professor of Law." It was only on the suggestion of the English publisher, that he was prevailed upon to append the other title, "Justice of the Supreme Court of the United States." He looked forward with peculiar delight to the time which seemed at hand, when he should lay down the honors and cares of the Bench, and devote himself singly to the duties of his Chair.

I have merely glanced at his character in his *three* different relations to jurisprudence. Great in each of these, it is on this unprecedented combination that his peculiar fame will be reared, as upon an immortal tripod. In what I have written, I do not think I am biased by the partialities of private friendship. I have endeavored to regard him as posterity will regard him; as all must regard him now, who fully know him in his various works. Imagine for one moment the irreparable loss, if all that he has done were blotted out forever. As I think of the incalculable facilities afforded by his labors, I cannot but say with Racine, when speaking of Descartes: *Nous courons; mais, sans lui, nous ne marcherions pas*. Besides, it is he who has inspired in many foreign bosoms, reluctant to perceive aught that is good in our country, a sincere homage to the American name. He has turned the stream of the law reflux upon the ancient fountains of Westminster Hall; and, stranger still, he has forced the waters above their sources, up the unaccustomed heights of countries alien to the common law. It is he also who has directed, from the copious well-springs of the Roman law, and from the fresher currents of the modern continental law, a pure and grateful stream, to enrich and fertilize our domestic jurisprudence. In his judgments, in his books, and in his teachings always, he drew from other systems to illustrate the doctrines of the common law.

The mind naturally seeks to compare him with the eminent Jurists, servants of Themis, who share with him the wide spaces of fame. In genius for the law, in the exceeding usefulness of his career, in the blended character of Judge and Author, he cannot yield to our time-honored master, Lord Coke; in suavity of manner, and in silver-tongued eloquence, he may compare with Lord Mansfield, while in depth, accuracy, and variety of juridical learning, he surpassed him far; if he yields to Lord Stowell in elegance of diction, he excels even his excellence in the curious exploration of the foundations of that jurisdiction which they administered in common, and in the development of those great principles of public law, whose just determination helps to preserve the peace of nations; and, even in the peculiar field illustrated by the long career of Eldon, we find him a familiar worker, with Eldon's profusion of learning, and without the perplexities of his doubts. There are many who regard the judicial character of the late Chief Justice Marshall as at an unapproachable height. I revere his name, and have ever read his judgments, which seem like "pure reason," with admiration and gratitude; but I cannot disguise, that even these noble memorials must yield in high juridical character, in learning, in acuteness, in fervor, in the variety of topics which they

concern, as they are far inferior in amount, to those of our friend. There is still spared to us a renowned Judge, at this moment the unquestioned living head of American jurisprudence, with no rival near the throne, — Mr. Chancellor Kent, — whose judgments and whose works always inspired the warmest eulogies of the departed, and whose character as a Jurist furnishes the fittest parallel to his own in the annals of our law.

It were idle, perhaps, to weave further these vain comparisons; particularly to invoke the living. But busy fancy revives the past, and persons and scenes renew themselves in my memory. I call to mind the recent Chancellor of England, the model of a clear, grave, learned, and conscientious magistrate, — Lord Cottenham. I see again the ornaments of Westminster Hall, on the Bench and at the Bar, where sits Denman, in manner, in conduct, and character "every inch" the Judge; where pleaded only a few short months ago the consummate lawyer Follet, whose voice is now hushed in the grave; their judgments, their arguments, their conversation, I cannot forget; but thinking of these, I feel new pride in the great Magistrate, the lofty Judge, the consummate Lawyer, whom we now mourn.

It has been my fortune to know the chief Jurists of our times, in the classical countries of jurisprudence, France and Germany. I remember well the pointed and effective style of Dupin, as he delivered one of his masterly opinions in the highest Court of France; I recall the pleasant converse of Pardessus, — to whom, commercial and maritime law is under a larger debt, perhaps, than to any other mind, — while he descanted on his favorite theme. I wander in fancy to the gentle presence of him with flowing silver locks, who was so dear to Germany, — Thibaut, the expounder of the Roman law, and the earnest and successful advocate of a just scheme for the reduction of the unwritten law to the certainty of a written text. From Heidelberg I fly to Berlin, where I listen to the grave lecture, and mingle in the social circle of Savigny, so stately in person and peculiar in countenance, whom all the continent of Europe delights to honor; but my heart and my judgment untravelled fondly turn with new love and admiration to my Cambridge teacher and friend. Jurisprudence has many arrows in her golden quiver, but where is one to compare with that which is now spent in the earth?

The fame of the Jurist is enhanced by the various attainments superinduced upon his learning in the law. His "Miscellaneous Writings" show a thoughtful mind, imbued with elegant literature, warm with kindly sentiments, commanding a style of rich and varied eloquence. There are many passages from these which have become the common-places of our schools. In early life he yielded to the fascinations of the poetic muse; and here the great lawyer may find companionship with Selden, who is introduced by Suckling into the "Session of Poets," as "close by the chair"; with Blackstone, whose "Farewell to the Muse" shows his fondness for poetic pastures, even while his eye was directed to the heights of the law; and also with Mansfield, of whom Pope has lamented in familiar words,

How sweet an Ovid, Murray, was our boast!

I have now before me, in his own handwriting, some verses written by him in

1833, entitled, "Advice to a Young Lawyer." As they cannot fail to be read with interest, I introduce them here.

Whene'er you speak, remember every cause  
 Stands not on eloquence, but stands on laws —  
 Pregnant in matter, in expression brief,  
 Let every sentence stand with bold relief;  
 On trifling points, nor time, nor talents waste,  
 A sad offence to learning, and to taste;  
 Nor deal with pompous phrase; nor e'er suppose  
 Poetic flights belong to reasoning prose.  
 Loose declamation may deceive the crowd,  
 And seem more striking, as it grows more loud;  
 But sober sense rejects it with disdain,  
 As naught but empty noise, and weak as vain.  
 The froth of words, the schoolboy's vain parade  
 Of books and cases — all his stock in trade —  
 The pert conceits, the cunning tricks and play  
 Of low attorneys, strung in long array,  
 The unseemly jest, the petulant reply,  
 That chatters on, and cares not how, nor why,  
 Studious, avoid — unworthy themes to scan,  
 They sink the speaker and disgrace the man.  
 Like the false lights, by flying shadows cast,  
 Scarce seen when present, and forgot when past.

Begin with dignity; expound with grace  
 Each ground of reasoning in its time and place;  
 Let order reign throughout — each topic touch,  
 Nor urge its power too little or too much.  
 Give each strong thought its most attractive view,  
 In diction clear, and yet severely true.  
 And, as the arguments in splendor grow,  
 Let each reflect its light on all below.  
 When to the close arrived, make no delays,  
 By petty flourishes, or verbal plays,  
 But sum the whole in one deep, solemn strain,  
 Like a strong current hastening to the main.

But the Jurist, rich with the spoils of time, the exalted magistrate, the orator, the writer, all vanish when I think of the friend. Much as the world may admire his memory, all who knew him shall love it more. Who can forget his bounding step, his contagious laugh, his exhilarating voice, his beaming smile, his countenance that shone like a benediction? What pen can describe these — what artist can preserve them on canvas or in marble? He was always the friend of the young, who never tired in listening to his mellifluous discourse. Nor did they ever leave his presence without feeling a warmer glow of virtue, a more inspiring love of knowledge and truth, more generous impulses of action. I remember him in my childhood; but I first knew him after he came to Cambridge, as Professor, while I was yet an undergraduate, and now recall freshly, as if the words were of yesterday, the eloquence and animation, with which, at that time, to a youthful circle, he enforced the beautiful truth, *that no man stands in the way of another*. The world is wide enough for all, he said, and no success, which may crown our neighbor, can affect our own career. In this spirit he run his race on earth, without jealousy, without envy; nay more, overflowing with appreciation and praise of labors which compare humbly with his own. In conversation, he dwelt with fervor upon all the topics which interest man; not only upon law, but upon litera-

ture, history, the characters of men, the affairs of every day; above all, upon the great duties of life, the relations of men to each other, to their country, to God. High in his mind, above all human opinions and practices, were the everlasting rules of *Right*; nor did he ever rise to a truer eloquence, than when condemning, as I have more than once heard him recently, that evil sentiment, — “Our country, *be she right or wrong*,” — which, in whatsoever form of language it may disguise itself, assails the very foundations of justice and virtue.

He has been happy in life; happy also in death. It was his hope, expressed in health, that he should not be allowed to linger superfluous on the stage, nor waste under the slow progress of disease. He was always ready to meet his God. His wishes were answered. Two days before his last illness, he delivered in Court an elaborate judgment on a complicated case in equity. Since his death, another judgment in a case already argued before him, has been found among his papers, ready to be pronounced.

I saw him for a single moment on the evening preceding his illness. It was an accidental meeting away from his own house — the last time that the open air of heaven fanned his cheeks. His words of familiar, household greeting, on that occasion, still linger in my ears, like an enchanted melody. The morning sun saw him on the bed from which he never again rose. Thus closed, after an illness of eight days, in the bosom of his family, without pain, surrounded by friends, a life, which, through various vicissitudes of disease, had been spared beyond the grand climacteric, that Cape of Storms in the sea of human existence:

Multis ille bonis flebilis occidit,  
Nulli flebilior quam mihi.

He is gone, and we shall see him no more on earth, except in his works, and in the memory of his virtues. The scales of justice, which he so long held, have fallen from his hands. The untiring pen of the Author rests at last. The voice of the Teacher is mute. The fountain, which was ever flowing and ever full, is stopped. The lips, on which the bees of Hybla might have rested, have ceased to distil the honeyed sweets of kindness. The manly form, warm with all the affections of life, with love for family and friends, for truth and virtue, is now cold in death. The justice of nations is eclipsed; the life of the law is suspended. But let us listen to the words, which, though dead, he utters from the grave: — “Sorrow not as those without hope.” The righteous judge, the wise teacher, the faithful friend, the loving father, has ascended to his Judge, his Teacher, his Friend, his Father in Heaven.

## No. II.

## PROCEEDINGS OF PUBLIC BODIES ON THE DEATH OF MY FATHER.

THE following tributes, chiefly from the Bench and the Bar, to the life, character, and services of my father, immediately followed his death.

## PROCEEDINGS IN MASSACHUSETTS.

At a meeting of the Bar of Massachusetts, held in the Circuit Court Room, on the morning of the 12th of September, the day of the funeral of Mr. Justice Story, Mr. Chief Justice Shaw having taken the chair, and announced the object of the meeting, the Honorable Daniel Webster rose and spoke nearly as follows: —

Your solemn announcement, Mr. Chief Justice, has confirmed the sad intelligence, which had already reached us, through the public channels of information, and deeply afflicted us all.

JOSEPH STORY, one of the associate Justices of the Supreme Court of the United States, and for many years the presiding Judge of this Circuit, died on Wednesday evening last, at his own house in Cambridge, wanting only a few days for the completion of the sixty-sixth year of his age.

This most mournful and lamentable event has called together the whole Bar of Suffolk, and all connected with the courts of law, or the profession. It has brought you, Mr. Chief Justice, and your associates of the Bench of the Supreme Court of Massachusetts, into the midst of us; and you have done us the honor, out of respect to the occasion, to consent to preside over us, while we deliberate on what is due, as well to our own afflicted and smitten feelings, as to the exalted character and eminent distinction of the deceased Judge. The occasion has drawn from his retirement, also, that venerable man, whom we all so much respect and honor, (Judge Davis,) and who was, for thirty years, the associate of the deceased, upon the same Bench. It has called hither another judicial personage, now in retirement, (Judge Putnam,) but long an ornament of that Bench, of which you are now the head, and whose marked good fortune it is, to have been the Professional Teacher of JOSEPH STORY, and the director of his early studies. He is here, also, to whom this blow comes near, — I mean the learned Judge, (Judge Sprague) — immediately from whose side it has struck away a friend, and a



highly venerated official associate. The members of the School, to which the deceased was so much attached, and who returned that attachment with all the ingenuousness and enthusiasm of educated and ardent youthful minds, are here also, to manifest their sense of their own severe deprivation, as well as their admiration of the bright and shining professional example, which they have so loved to contemplate; an example, — let me say to them, and let me say to all, as a solace, in the midst of their sorrows, — which death hath not touched, and which time cannot obscure.

Mr. Chief Justice, one sentiment pervades us all. It is that of the most profound and penetrating grief, mixed, nevertheless, with an assured conviction, that the great man whom we deplore, is yet with us, and in the midst of us. He hath not wholly died. He lives in the affections of friends, and kindred, and in the high regard of the community. He lives in our remembrance of his social virtues, his warm and steady friendships, and the vivacity and richness of his conversation. He lives, and will live still more permanently, by his words of written wisdom, by the results of his vast researches and attainments, by his imperishable legal judgments, and by those juridical disquisitions, which have stamped his name, all over the civilized world, with the character of a commanding authority. *Vivit, enim, vivetque semper; atque etiam latius in memoria hominum et sermone versabitur, postquam ab oculis recessit.*

Mr. Chief Justice, there are consolations which arise to mitigate our loss, and shed the influence of resignation over unfeigned and heartfelt sorrow. We are all penetrated with gratitude to God, that the deceased lived so long; that he did so much for himself, his friends, the country and the world; that his lamp went out, at last, without unsteadiness or flickering. He continued to exercise every power of his mind, without dimness or obscuraton, and every affection of his heart, with no abatement of energy or warmth, till death drew an impenetrable veil between us and him. Indeed, he seems to us now, as in truth he is, not extinguished, or ceasing to be, but only withdrawn; as the clear sun goes down at its sitting, not darkened, but only no longer seen.

This calamity, Mr. Chief Justice, is not confined to the Bar, or the Courts, of this Commonwealth. It will be felt by every Bar, throughout the land, by every Court, and indeed by every intelligent and well-informed man, in or out of the Profession. It will be felt still more widely, for his reputation had a still wider range. In the High Court of Parliament, in every tribunal in Westminster Hall, in the Judicatories of Paris and Berlin, Stockholm and St. Petersburg, in the learned Universities of Germany, Italy, and Spain, by every eminent jurist in the civilized world, it will be acknowledged, that a great luminary has fallen from the firmament of public jurisprudence.

Sir, there is no purer pride of country than that in which we may indulge, when we see America paying back the great debt of civilization, learning, and science to Europe. In this high return of light for light, and mind for mind, in this august reckoning and accounting between the intellects of nations, JOSEPH STORY was destined by Providence to act, and did act, an important part. Acknowledging, as we all acknowledge, our obligations to the original sources of English law, as well as of civil liberty, we have seen, in our generation, copious and salutary

streams turning and running backward, replenishing their original fountains, and giving a fresher and a brighter green to the fields of English jurisprudence. By a sort of reversed hereditary transmission, the mother, without envy or humiliation, acknowledges that she has received a valuable and cherished inheritance from the daughter. English justice admits, with frankness and candor, and with no feeling but that of respect and admiration, that he, whose voice we have so recently heard within these walls, but shall now hear no more, was of all men who have yet appeared, most fitted by the comprehensiveness of his mind, and the vast extent and accuracy of his attainments, to compare the codes of nations, to trace their differences to difference of origin, climate, or religious or political institutions, and to exhibit, nevertheless, their concurrence in those great principles, upon which the system of human civilization rests.

Justice, sir, is the great interest of man on earth. It is the ligament which holds civilized beings and civilized nations together. Wherever her temple stands, and so long as it is duly honored, there is a foundation for social security, general happiness, and the improvement and progress of our race. And whoever labors on this edifice, with usefulness and distinction, whoever clears its foundations, strengthens its pillars, adorns its entablatures, or contributes to raise its august dome still higher in the skies, connects himself in name, and fame, and character, with that which is and must be as durable as the frame of human society.

All know, Mr. Chief Justice, the pure love of country, which animated the deceased, and the zeal, as well as the talent, with which he explained and defended her institutions. His work on the Constitution of the United States, is one of his most eminently successful labors. But all his writings, and all his judgments, all his opinions, and the whole influence of his character, public and private, leaned strongly and always, to the support of sound principles, to the restraint of illegal power, and to the discouragement and rebuke of licentious and disorganizing sentiments. *Ad rempublicam firmandam, et ad stabiliendus vires, et sanandum populum, omnis ejus pergebat institutio.*

But this is not the occasion, sir, nor is it for me to consider and discuss at length, the character and merits of Mr. Justice Story, as a writer or a Judge. The performance of that duty, with which this Bar will, no doubt, charge itself, must be deferred to another opportunity, and will be committed to abler hands. But, in the homage paid to his memory, one part may come with peculiar propriety and emphasis from ourselves. We have known him in private life. We have seen him descend from the Bench, and mingle in our friendly circles. We have known his manner of life, from his youth up. We can bear witness to the strict uprightness and purity of his character; his simplicity, and unostentatious habits; the ease and affability of his intercourse; his remarkable vivacity, amidst severe labors; the cheerful and animating tones of his conversation, and his fast fidelity to friends. Some of us, also, can testify to his large and liberal charities, not ostentatious or casual, but systematic and silent,—dispensed almost without showing the hand, and falling and distilling comfort and happiness, like the dews of heaven. But we can testify, also, that in all his pursuits and employments, in all his recreations, in all his commerce with the world, and in his intercourse with

the circle of his friends, the predominance of his judicial character was manifest. He never forgot the ermine which he wore. The Judge, the Judge, the useful and distinguished Judge, was the great picture which he kept constantly before his eyes, and to a resemblance to which all his efforts, all his thoughts, all his life, were devoted. We may go the world over, without finding a man who shall present a more striking realization of the beautiful conception of D'Aguesseau, — *C'est vain que l'on cherche, à distinguer en lui la personne privée et la personne publique ; un même esprit les anime, un même objet les réunit ; l'homme, le père de famille, le citoyen, tout est en lui consacré à la gloire du Magistrat.*

Mr. Chief Justice, one may live as a conqueror, or a magistrate ; but he must die as a man. The bed of death brings every human being to his pure individuality ; to the intense contemplation of that deepest and most solemn of all relations, the relation between the creature and his Creator. Here it is, that fame and renown cannot assist us ; that all external things must fail to aid us ; that even friends, affection, and human love and devotedness, cannot succor us. This relation, the true foundation of all duty, a relation perceived and felt by conscience, and confirmed by revelation, our illustrious friend, now deceased, always acknowledged. He revered the scriptures of truth, honored the pure morality which they teach, and seized hold on the hopes of future life, which they impart. He saw enough in nature, in himself, and in all that can be known of things seen, to feel assured that there is a Supreme Power, without whose Providence not a sparrow falleth to the ground. To this gracious Being he trusted himself, for time and for eternity ; and the last words of his lips, ever heard by mortal ears, were a fervent supplication to his Maker to take him to Himself.

The following resolutions drawn up by George S. Hillard, Esq., and Charles Sumner, Esq., were then submitted to the meeting by Mr. Webster.

*Resolved*, That the members of the Suffolk Bar have learned with deep regret the death of the Honorable JOSEPH STORY, one of the Justices of the Supreme Court of the United States, and Dane Professor of Law in Harvard University.

*Resolved*, That we acknowledge with the liveliest gratitude, the vast debt which we and our whole country owe to his labors and services as a *Judge*. He was elevated to the Bench in early manhood, and his judicial life was prolonged to a period almost unexampled in the annals of the common law. The wisdom of the selection was immediately indicated, by the distinguished ability which he displayed, and each succeeding year has added to the splendor and extent of his judicial fame. He moved with familiar steps over every province and department of jurisprudence. All branches of the law have been illustrated and enlarged by his learning, acuteness, and sagacity, and of some he has been the creator. His immortal judgments contain copious stores of ripe and sound learning, which will be of inestimable value in all future times, alike to the judge, the practitioner, and the student. We, too, who have had such ample opportunities of witnessing his judicial presence, can give our emphatic tribute of admiration to the gentle dignity with which he administered the law, to his untiring industry, his firm impartiality, his uniform courtesy, and recognition of the rights of all who approached him, his quickness and tact in the despatch of business, the readiness with which he applied his vast learning, and his humanity in the treatment of those towards whom he was called upon to direct the powers and frowns of the law.

*Resolved*, That in regarding the deceased as an *Author*, Jurisprudence mourns one of her greatest sons, — one of the greatest not only among those of his own age, but in the long succession of ages, whose fame has become a familiar word in all lands, where the law is taught as a science ; whose works have been translated and commented on in several of the classical languages of the European continent ; and have been revered as authorities throughout the civilized world. It was his rare lot, while yet alive, to receive, as from a distant posterity, the tribute of foreign nations to his exalted merit as a jurist.

*Resolved*, That we mourn his loss as a *Teacher* of Jurisprudence, who brought to the important duties of the professor's chair the most exuberant learning, the most unwearied patience, a native delight in the great subjects which he expounded, a copious and persuasive eloquence, and a contagious enthusiasm, which filled his pupils with love for the law, and for the master who taught it so well; who illumined all his teachings by the loftiest morality, and never failed to show that whosoever aspired to the fame of a great lawyer must be also a good man.

*Resolved*, That we recall with gratitude and admiration, his character as a *Man* and a member of society. We have seen and felt the daily beauty of his life. We honor his memory for his domestic virtues, his warm affections and generous temper, the purity, elevation, and simplicity of his life and conversation, and the spontaneous sympathy which gave so cordial a charm to his looks, his tones, and his greetings. The approach of age never chilled the impulses of his heart, nor deadened his interest in life. We respect, too, his activity of mind, the literary attainments which his systematic industry enabled him to acquire, and the unaffected conscientiousness which made him so ready to assume, and so prompt to discharge the common duties of life.

*Resolved*, That the death of one so great as a Judge, as an Author, as a Teacher, and so good as a Man, is a loss which is irreparable to the Bar, to the country, and to mankind.

*Resolved*, That a committee of twelve be appointed by the Chair, to consider and determine the proper tribute of respect to the deceased, and to make the necessary arrangements for carrying the same into execution.

*Resolved*, That the Bar tender their heartfelt sympathy to the family of the deceased, and request permission to join in the funeral ceremonies.

*Resolved*, That the President of this meeting be requested to communicate a copy of these resolutions to the family of the deceased; and the attorney of the United States be requested to communicate the same to the Circuit Court of the United States, over which the deceased has so long presided, and ask to have them entered on the records of the Court.

Judge Davis then addressed the Chair:

It might be more discreet, he said, for him in his advanced years, to be seated among his professional friends, on this sad occasion, in silent sorrow; but there were circumstances which would excuse his attempt to accompany his approbation of the resolutions which had been offered, with some expressions prompted by the lamented death of a man so distinguished and so beloved as Judge Story. In this apartment his welcome voice was often heard, and heard with delighted attention. The winged words, were words of wisdom and truth. Here then shone the "glad-some light of Jurisprudence," where, within walls now, is substituted the dim light, may we not say the "dim religious light" of lamentation. Our excellent friend, who has offered the resolutions under consideration, has given us in distinct and just relief the distinguishing features in the life and character of Judge Story, which we all recognize to be as correct as they are impressive. With me there are special reasons for grateful recollections of the eminent Jurist, the loss of whom we with the whole community feelingly deplore. It was my lot to be associated with him in judicial services, for nearly the whole period of his official life. It was throughout, to me, a pleasant and most instructive portion of my life, and the recollection of its incidents, the genial influence of his happy temperament, and the ready expression of his varied and extensive learning, enriched and adorned by the felicitous action of his energetic mind, have been with me habitual themes of grateful recollection. It was said of a very distinguished man of Science in Scotland, Colin MacLaurin, who had done much in the field of the exact Sciences, a follower of the illustrious Newton, "He was taken from us when he was capable of doing much more, but he left an example which will long be admired and imitated,

until the revolution of human affairs puts an end to learning in these parts of the world, or the fickleness of men, and their satiety of the best things, have substituted some empty form of false science, and by the one or the other means we are brought back to our original state of barbarity."

We may say the same of the various well-digested, happily constructed performances of Judge Story, in the line of his profession. They are a treasure, a rich treasure for his country and of civilized man in every region, and will be gratefully admired and cherished, so long as the light and love of all good learning shall remain unextinguished.

With the mention of Colin MacLaurin, occurs the apt and instructive epitaph, written by his son on the monument which he had erected in memory of his revered father. "His Son erects this monument, not to perpetuate his Father's name, for it needs not such aid, but that in this vale of sorrow and solitude, mortals might receive consolation; for let them study his works, and be assured that the capacious mind from which proceed such conceptions survives the perishing body."

The original is in Latin, in better expression than the translation, which has been offered. In this assembly a quotation from that performance will not, it is presumed, be considered as improper or pedantic.

Hunc lapidem posuit filius,  
Non ut nomini paterno consulat,  
Nam tali auxilio nil eget,  
Sed ut in hoc infelice campo,  
Ubi luctus regnat et pavor,  
Mortalibus prorsus non absit solatium,  
Mentemque tantarum rerum capace  
Corpori caduco superstitem crede.

The remains of Judge Story will rest at Mount Auburn, with those of his distinguished classmate William Ellery Channing. With such thoughts let them be contemplated, as those happily applied to the memory of MacLaurin by his affectionate son.

The resolutions which have been offered, will, I trust, meet with cordial approbation, and I have only to ask leave to second the motion for their acceptance.

The resolutions were unanimously adopted; and the Chair appointed, on the Committee provided for by the seventh resolution, Judge Davis, Hon. Jeremiah Mason, Judge Putnam, Judge Jackson, Benjamin Rand, Judge Sprague, Charles G. Loring, Franklin Dexter, B. R. Curtis, Judge Warren, Charles Sumner, and Robert Rantoul, Jr.

Mr. Jeremiah Mason then introduced the following resolution, with a few appropriate remarks:

*Resolved*, That Mr. Webster be requested to pronounce a Discourse on the life and judicial character of the late Mr. Justice Story, at such time and place as shall be designated by the Committee of the Bar.

Judge Sprague spoke briefly in favor of the resolution, and seconded the motion for its passage. It was adopted.

Mr. Webster has not fulfilled this office.

At the next meeting of the Circuit Court for the District of Massachusetts, Mr. Rantoul, the District Attorney, addressed the Court as follows:—

The members of the Suffolk Bar, at a meeting holden by them on the twelfth of September last, requested me to present your Honors a series of resolutions, adopted by them, expressive of their regret for the loss which the profession and the country have sustained in the decease of the Hon. Joseph Story, late Justice of the Supreme Court of the United States, who has presided in this Court for more than half the period of its existence.

These resolutions contain a heartfelt tribute of admiration, from those who have known him longest and best, for the ability, integrity, and untiring and conscientious devotion to duty with which he discharged all the functions of his elevated and responsible station.

It would seem to be peculiarly appropriate that the long series of opinions and judgments which he has delivered here, should be followed, closed, and, as it were, crowned by this unanimous testimonial of the respect and esteem which his official services, no less than his private worth, have commanded among his professional brethren.

I shall therefore move that the resolutions, after having been read, may be entered upon the records of this Court.

Judge Sprague made the following reply:—

As a member of the Court I receive the proceedings of the Bar in regard to the late Mr. Justice Story, with deep emotion. I most cordially unite with them in profound regret for his death; in revering his private virtues, in admiration of his genius; of his rapid, powerful and comprehensive mind; of his flowing and persuasive eloquence; of the kindness and urbanity of his manner, his untiring industry, his enthusiastic devotion to the science of jurisprudence, and of his vast and various learning.

The variety of his judicial labors exceeded, it is believed, those of any magistrate in any other country. He was called upon to exercise full jurisdiction in Equity and Admiralty, and to administer the Common Law, the Criminal Code, and that new but profound and comprehensive department of Jurisprudence—Constitutional Law—arising from our complex system of Federal and State governments with the whole body of the statute laws of the United States, and the local laws of no less than twenty-six different States. In each department he equalled the learning of those who had made it the peculiar study of their lives; and each successively seemed to be that which he had most perfectly mastered. Those who have contemplated his published works and judicial opinions, and have witnessed the inexhaustible streams of intellectual wealth which he poured forth in the daily duties of the Bench, will concur in the belief that he was for years before his death the most learned jurist of the age.

He has departed in the vigor of his intellect, and in the splendor of a fame as extended as civilization.

We shall hear his voice no more; but as long as the judicial tribunals of our country shall exist, as long as law shall be studied as a science, so long will his name and his fame survive.

Judge Sprague having concluded his remarks, Judge Woodbury spoke as follows:—

I concur fully in the regrets that have been expressed by the Bar and my associate on account of the decease of Judge Story. The various tributes to his memory which have been paid since that lamented event, are strong evidence of the high estimate placed upon his character. That character possessed a fortunate combination of excellencies. Others, more favored with a long and intimate acquaintance with him in private as well as public life, have feelingly dwelt on them. And here, in the neighborhood of his birth-place, and amidst the scenes and friends of much of his brilliant career, it is not strange that his memory should be cherished with most sensibility, and his example leave behind the most durable impressions. But such a character and such an example will be felt in their influences still more widely. Whether on or off the Bench, whether in the labors and responsibilities of judicial office, or in researches as a writer on constitutional law and other topics connected with his profession, or as a lecturer to youth on its various elementary principles, he occupied a lofty position, and his works were well known on both continents. He is believed to have published a revised edition of Abbott on Shipping more than a third of a century ago, before seated on this Bench; and at that early day, by making himself familiar with admiralty treatises, from the sea laws of Oleron downwards, and with the foundations of all European jurisprudence, from Justinian to the revival of letters, he soon became distinguished in illustrating questions of a commercial nature and matters of enlarged equity, and indeed every topic more immediately interwoven with that great civil code by which so much of the world has been governed and so long.

But it is not necessary on this occasion, and after so full details by others, to dwell on his distinction in connection with these subjects. Concerning them all, his predecessor, "though dead, still speaketh." Let us be grateful that his judgments and writings survive. His profession, however severe their loss, will continue for ages to be benefited by the fruits of his industry. His devotion to the law as a science, and his purity of purpose and ability in administering it, will long reflect lustre on his country as well as his profession. And his family and more intimate friends, though no longer blessed by his virtues in private life, or his rich stores in conversation, or his amiability and courtesy of manners, over which death has cast his pall forever, will profit still by the memory of them; and, amidst their grief, will find some solace in the honors that cluster around his grave, and in the cheering prospect beyond it which brightened the departure of his spirit from the troubled scenes of earth.

Let the resolutions presented by the gentlemen of the Bar be entered on the records of the Court.

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On the opening of the District Court, Robert Rantoul, Jr., Esq., District Attorney, announced the death of Judge Story as follows:—

*May it please your Honor:*

Since the session of this Court yesterday, an event has occurred which it becomes

my melancholy duty to announce to you. His Honor Joseph Story, for more than a third of a century Justice of the Court of the United States for this Circuit, died last evening at his residence in Cambridge.

The intelligence, though we have had, for a few days past, reason to anticipate it, strikes us at last with surprise. It is difficult to realize at once the loss which has been sustained, and the void which is left by the departure of a master of legal science, second to none whom this continent has produced, and whose unrivalled learning was associated with those kindlier qualities of the heart which so long made him the delight of his numerous circle of friends.

He has gone to join the society of the just made perfect, and to receive the blessings of the pure in heart. After we have recovered from the shock which this annunciation brings with it, our memory will review his life and character, and dwell upon his worth, his virtue, his services, and his history.

I have now only to move that this Court be adjourned.

To which his Honor, Judge Sprague, made the following reply :

No language can add to the solemnity of the event which has just been announced.

The death of no man could have given so great a shock to the judicial tribunals throughout our country, and to all engaged in the administration of the laws.

In this Circuit, where he had so long presided with unsurpassed ability and unequalled learning, this dispensation of an inscrutable Providence comes with stunning and overwhelming force.

It is fit that we should pause to contemplate it, that it should arrest the course of worldly business, and to that end the Court readily accedes to the motion which has been made.

The Court was then adjourned until Friday.

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#### PROCEEDINGS OF THE SUPREME COURT OF THE UNITED STATES.

At the opening of the Court on Thursday, Mr. Mason, Attorney-General of the United States, addressed the Court as follows :—

*May it please your Honors :*

Since your last term the senior Associate Justice of this Court has departed this life. At a meeting of the members of the Bar and officers of the Court held on yesterday, resolutions were adopted expressive of their veneration for the memory of the deceased, and of their sense of the loss which has been sustained by the Court, the profession, and the country. They have done me the honor to impose on me the melancholy task of communicating their proceedings to the Bench.

I am but too sensible of the disadvantages under which I labor in acquitting myself in this presence of the duty thus confided to me. I had not the advantage of any intimate personal acquaintance with Mr. Justice Story. But he was known to me, as to every lover of an enlightened jurisprudence, and to every admirer of learning and purity in our magistracy, through the fame which he had honorably



won, and the light which he had shed on all the various subjects of professional learning, in his opinions delivered from that Bench, and the works which he published to the world.

At the early age of thirty-two years, he was appointed an Associate Justice of this Court. In thirty-four years of service in his high office, he acquitted himself of all his responsible duties with a dignity, integrity, and learning, which proved him worthy of this exalted judicial tribunal.

He gave to the profession an example of successful industry above all price. It is wonderful that he should have accomplished so much. Unfailing in his attendance here, participating largely in all the learned labors which bear so oppressively on this Court, constant in the discharge of his judicial duties in one of the most important Circuits of the Union, he found time to instruct, as a Professor, large classes for many successive years, and to prepare and publish a greater number of learned legal works than any other author. Yet, in the midst of the severe and incessant studies which could alone produce such results, he was devoted to the enchanting delights of elegant literature, and was distinguished for his happy and cheerful domestic life, and his spirited social intercourse.

The learning which he displayed as a jurist and author extended his fame to every country where an enlightened jurisprudence prevails; and the amiable and Christian character of the man has filled the whole community with grief at his death.

But your Honors, with whom he associated for a period so far beyond what falls to the lot of most of those who reach this elevated distinction, can best appreciate his character as a Judge, and his virtues as a man, and will confirm the testimony of the gentlemen whose proceedings I now have the honor to present:

At a meeting of the members of the Bar and officers of the Supreme Court of the United States, at the Court Room in the Capitol, on the third day of December, A. D. 1845, David B. Ogden, Esq. was appointed Chairman, and the Hon. George M. Bibb, Secretary.

The Hon. John Davis, the Hon. George Evans, and the Hon. R. C. Winthrop were appointed a committee to prepare resolutions expressive of the sentiments and feelings of the meeting on the melancholy event of the recent death of the Honorable Joseph Story, one of the Associate Justices of the Supreme Court of the United States.

Whereupon, Mr. Davis, in behalf of the committee so appointed, presented the following preamble and resolutions, which were unanimously adopted by the meeting:

Since the last annual session of the Supreme Court of the United States, one of its most distinguished members has fallen a victim to the lot of humanity. The earthly career of that able and faithful Judge, Joseph Story, of Massachusetts, has terminated, and we trust that his exalted virtues will secure rest to his spirit among those who are made perfect.

The Bar has been deprived of one of its brightest ornaments, and the Bench of one of its most learned and illustrious members. Those who have long witnessed the pure example, and venerated the talents, learning, and untiring zeal of the deceased, cannot permit an event so solemn and afflictive to pass unnoticed. Few

men of any age or country have left behind them stronger proofs of great and successful labors in legal research, or higher claims to public respect and gratitude. He explored with extraordinary powers of analysis the learning of the past, embodying and systematizing those great principles of jurisprudence which illustrate his decisions as a Judge, and give imperishable value to his works as an author.

As a magistrate he aimed to win esteem and respect for the Bench by the purity of his example, and to inspire confidence in its decisions by a prompt, just, enlightened, and faithful administration of the laws.

In the midst of the urgent duties of his high and responsible station, which were sufficient to task a more than ordinary mind, he found leisure to indulge his love of legal study, and produced a series of works which have taken rank among standard authorities, and will carry his fame to posterity as a jurist of great accomplishments.

His decisions on the Bench, as well as the productions of his pen, prove alike the earnest zeal with which his mental energies were applied to sustain the Constitution and Laws of the Republic, and the conscientious rectitude with which he discharged the great and complicated duties which devolved upon him.

While we feel just pride in the attainments of one so distinguished as a public officer and as an author, we cannot forget those extraordinary social qualities, and that amiable deportment in private life, which endeared him to his friends and acquaintance. If in his high public station he commanded the esteem and confidence of the public, in the ordinary duties of life he won and retained the respect and love of all who were connected with him in the varied relations in which he stood to the community.

When so pure and so illustrious a man descends to the tomb while his usefulness is unimpaired, and his work unfinished, the calamity is the more severely felt, and the occasion is a fit one for his bereaved friends and the public to give utterance to their grief, and to testify their veneration and respect for the memory of the deceased. Therefore, resolved:

1. That we hold in the highest estimation the learning, the integrity, the distinguished services, and the exalted virtues of the late Judge Story, and deeply deplore the loss which the Bench and the country have sustained by the death of one so eminently qualified for the high station which he filled.

2. That we sympathize with his bereaved family in their affliction, who mourn the loss of an affectionate husband, a kind parent, and a good citizen.

3. That from respect to the memory of him who has filled so large a space in the affairs of the country, we will, during the present session of the Court, wear the usual badge of mourning.

4. That these resolutions be communicated to the Court by the Attorney-General, with a request that they may be entered upon the records; and, further, that they be communicated to the family of the deceased by the Chairman of this meeting.

DAVID B. OGDEN, Chairman.

GEORGE M. BIBB, Secretary.

To which Mr. Chief Justice Taney replied:

It is difficult for me to express how deeply the Court feel the death of Mr. Justice Story. He held a seat on this Bench for so many years, and was so eminently distinguished for his great learning and ability, that his name had become habitually associated with the Supreme Court, not only in the mind of those more immediately connected with the administration of justice, but in that of

the public generally throughout the Union. He had, indeed, all the qualities of a great Judge, and we are fully sensible that his labors and his name have contributed largely to inspire confidence in the opinions of this Court, and to give weight and authority to its decisions.

It is not, however, in this country only that the name of Justice Story is respected and honored. His works upon various branches of jurisprudence have made him known to eminent men wherever juridical knowledge is esteemed and cultivated; and, wherever he is known, his opinions are quoted with respect, and he is justly regarded as one of the brightest ornaments of the age in which he lived. But it is here on this Bench that his real worth was best understood, and it is here that his loss is most severely and painfully felt; for we have not only known him as a learned and able associate in the labors of the Court, but he was also endeared to us as a man by his kindness of heart, his frankness, and his high and pure integrity. We most truly and deeply deplore his death, and cordially unite with the Bar in paying appropriate honors to his memory. The proceedings of to-day will therefore be entered on the records of the Court, as a lasting testimony of our respectful and affectionate remembrance of our departed brother.

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#### PROCEEDINGS IN MAINE.

At a meeting of the Bar of the Circuit Court, on the first day of the October Term, 1845,—the Hon. Stephen Longfellow, the President of the Bar, in the Chair,—the following resolutions, which had been drawn under previous appointment by Charles S. Daveis, Esq., were presented and adopted:—

*Resolved*, That the members of the Bar of the Circuit Court of the United States in Maine do not meet for the first time since the lamented decease of the Honorable Joseph Story, late presiding Judge, without deep emotions of sorrow and sympathy.

That although they were not sure they should ever see him again upon the Circuit, and experience the continued benefit of his eminent judicial talents and invaluable labors upon this Bench, they hoped that the sphere, which had been so long enlivened by his active presence, would be still animated by his living spirit; and from the vigor and vitality of his constitutional temperament, the vividness of his intellect, and his undiminished interest in the cultivation of his favorite science, they had looked forward to an extended period, in which the public and the profession should enjoy the prolonged light of his powerful and comprehensive mind, and the genial influence of his instructions and example, among those emanations that should most gracefully adorn, in its grateful coming on, the mellow evening of his life.

*Resolved*, That while in common with the rest of their professional brethren, and the great community of the wise and good, throughout the country, they share the sense of this immeasurable and universal loss, so much deplored by the lovers of justice, virtue and order, everywhere in our land, they cannot but feel, in the most lively manner, the portion which falls to their own lot; nor cease to recall the gratification inspired, and the cheering and instructive impulses imparted by his spring and autumnal visits to this part of the Circuit, during the space of a quarter of a century; and that the brief moment, which has elapsed since his lamented decease, has not abated the earnest desire to offer and record their imperfect expression of admiration for his departed worth, and cherished attachment to his memory.

*Resolved*, That in coming together from distant parts of this district, on the morning of the Fall term which forms the commencement of the Eastern Circuit, so suddenly ensuing upon this striking termination of his unexpired judicial labors, while they do not feel that they can add any thing of weight to the first spontaneous tributes that have

already been so worthily paid by older Bars,—and especially that which was pronounced with so much force and feeling, upon the immediate announcement of the mournful event, by the assembly of the Bar of the metropolis of New England, to his consummate character as a Judge, an author, a teacher, a citizen, and a friend,—it may not be unbefitting that they should embrace the occasion thus presented, and thus bringing home to them the abrupt and affecting close of their late relation, to declare their consciousness of the distinguished privilege they have enjoyed in its having subsisted so long and with so much cordiality and satisfaction, and with so much advantage, as they persuade themselves, to the advancement and dignity of the profession, and the illustration of the doctrines of the legal science, in the high administration of justice, in all its appropriate departments, upon sea and land; and that they should indulge their own sincere feeling, in summing up, in such expression as may be in their power, the high sense they entertain of his singular excellence and endowments as a jurist, a magistrate, and a man.

As no one was more generous in his own awards to the merits of others, or poured more faithful tributes to those whom he has lamented, it is meet that his memory should not want the meed which it has so richly earned, and that full measure of acknowledgment and appreciation, of which, however amply accorded by cotemporary testimony, the delicate propriety of professional relations may have restrained the utterance during his official life. To him, no longer living, we only pay due honors.

*Resolved*, That while many of us remember the lively satisfaction with which the extension of his Circuit was bailed to this district, and recall the occasion of his cordial greeting upon the erection of our eastern section of the Ancient Commonwealth into an independent State, and some still recollect the period of his original elevation to the Bench, we may all rejoice that the day has more than fulfilled the auspicious dawn, and has created such a clear and steady light, so broad, illuming, and vivifying, wherever it has spread, and upon whatever subject it has shone, that although the living orb may be withdrawn, no night can follow.

*Resolved*, That we regard his advancement to the highest seat of our American judiciary, in conjunction with his eminent associations upon the Supreme tribunal of the nation, and his able coadjutors upon the Circuit, as marking an epoch from which we may date an *Era* in the annals of our jurisprudence, of which our time shall, happily, not see the end: *one*, as we may properly feel, on the part of the American Bar, of which his vast and various learning, the affluence of his judicial attainments, the universality and splendor of his accomplishments, the munificent gifts which he has laid upon the altar of the law, the attractive graces with which he has attired its services, along with those erudite and abundant expositions, of which he was the author,—to us its breathing oracles,—have been among the most authentic, enriching, and important elements.

And when we call to mind his zeal in the cause of its science, his unwearied and exhausting labors in deepening and clearing the sources, conducting the streams and enlarging the limits of legal knowledge, the mature developments, and disciplined energies which he has brought to it, of his intellect—and summon up that signal capacity of grasping the most abstruse, complicated, and difficult subjects—that quickness of conception, almost amounting to intuition, outstripping the process of logical deduction, and anticipating the results of profound and laborious reflection—that vigor of comprehension from which nothing escaped—that fervent and intense analysis, of which nothing could elude the keenness or resist the force—that eminent sagacity and judgment, to which his other faculties were subservient, and all other operations and resources only ministering—the copiousness and clearness of living eloquence with which he has illustrated, explained, and enforced the strictest and purest doctrines of law and equity—the charm he has given to the study, and the captivations with which he has invested the pursuit—the elevation he has imparted to the practice—the scale of legal attainment, and standard of professional excellence which he has done so much to raise and to improve—the exalted tone of morality which he has infused, and the enthusiasm which he has inspired, especially in the breasts of younger votaries, and the undecaying glow which he has lighted up in the bosoms of those who have longest cultivated the profession, at once kindled and fed by the treasures of legal lore which he has lavished upon it; and when we add again the kindred fields of philosophy and literature which he has delighted to explore, and from which he has won so many appropriate wreaths—and, more than all, when we bring up to our thoughts that true, enlarged, and essential humanity which was the life-spring of his nature, and gave such energy to his indignant denunciations of all the darker violations of its natural dictates, that genuine love of liberty which he cherished with religious devotion, and the intrepid firmness with which at the same time he upheld the most rigid sanctions of private law, and the most grave and sacred injunctions of public justice—we deem all these to have given a splendor to his name and time, and to have thrown a glory around them, which, while it has illuminated our own hemisphere, has cast its effulgence with no measured radiance,

or mere reflected lustre, abroad—and to have made him by all confession among ourselves, and the consenting suffrage of enlightened foreigners, one of the greatest masters of the legal science in the world, and the most illustrious genius of the jurisprudence of the age.

*Resolved*, That while we thus partake, in no common share, the sensibility with which society, in all its circles, surveys its loss, in him who sleeps beneath the tranquil shades of Mount Auburn, now consecrated anew by receiving his remains, and while we mourn with those who mourn it most, and forget not the goodness of his heart, the gentleness and united ardor of his nature, the genuineness and instinctiveness of his sympathies, and pass not over what has been termed, with more than classic purity, the daily beauty of his life, and all those blended graces in his character, which were among its most expressive lineaments, and while we may be allowed to call to mind especially the cordial charm which he threw over his constant intercourse with his professional brethren, like that which pervaded his whole familiar converse, we may well rejoice, and with devout gratitude, above all, we do rejoice, that his great powers were bestowed upon some of the best and weightiest interests of the social state, the most grave and important objects to which the highest active moral and intellectual powers can be applied, the most vital concerns to the well-being and condition of mankind, the ruling principles of justice, equity, and order.

We rejoice that it was eminently his fortune to carry out, so near to its natural close, a career rarely equalled in the judicial life of a single individual, rewarded by so many results, and crowned with such celebrity. The sun knoweth his going down. And, although painful and unexpected, we may not feel it to be otherwise than a final, harmonious felicity in keeping with his signal lot, that he should have breathed his last before he retired from the Bench: *Felix non vita tantum claritate, sed etiam opportunitate mortis.*

We rejoice, too, that faculties which could have never been imparted in vain, and seldom granted with more prodigality, should have been thus exerted for some of the noblest earthly purposes to which they could have been appointed: That he should have exercised so large and beneficent an agency in the most useful affairs of society, and varied interests of mankind: That trusts of the most important and comprehensive character, such as are implied by Providence in the talents given, and their highest principles involved in the capacity for their discharge, thus committed, should have been so far fulfilled.

That he should have left such invaluable legacies of his wisdom and learning to the profession and the world, in works of which we cannot weigh the worth, and which those that come after us, will not willingly let die. And we may well rejoice, moreover, that he should not have been called to pay the great debt to nature until he had so largely discharged that which it was his pride to acknowledge himself to owe to the science and the profession; one which he felt within himself such a conscious power to discharge, so far as it should be compatible with the sovereign dispensation of the divine will. And most devoutly do we rejoice, that the record of his fidelity should have so fully been completed. *Quicquid ex illo amavimus, quicquid mirati sumus, manet, mansurumque est in animis hominum, in æternitate temporum, fama rerum.*

While we are thus called to feel, in his own expressive words, that "there is an excellence over which death hath no power, but lives on through all time, still freshening with the lapse of ages"—and are also led to read the solemn sentence inscribed upon the portals of the grave, "Then shall the dust return to the earth again, and the spirit unto God who gave it,"—and are drawn to listen to the closing requiem of mortal labors, in the divine voice, "Blessed are the dead, that die in the Lord, for they rest from their labors, and their works do follow them,"—we follow with this parting tribute of our affection and admiration his immortal spirit, entering upon that reversion of fame which awaits illustrious worth in this world, and as we humbly hope, that high reversion which faith assigns to the pure and just in the future.

*Resolved*, That these resolutions be communicated to the Court at the opening of the term, and that a copy be also forwarded to the family of the deceased by the President.

STEPHEN LONGFELLOW, *President.*

PHINEHAS BARNES, *Secretary.*

On the opening of the Circuit Court on the same day, in pursuance of the foregoing, the Attorney of the United States, Augustine Haines, Esq., presented these resolutions to the Court, with an appropriate address.

To these proceedings, his Honor Judge Ware, the associate presiding Judge, responded as follows:—

*Gentlemen of the Bar : —*

On my part, as one of the Court, I receive with profound sensibility and cordially respond to the terms in which you have expressed yourselves in regard to the late presiding Judge of this Court. Having been associated with him for more than twenty years in the performance of judicial duties in this district, on this occasion, which brings back fresh to my recollection the incidents occurring in an official connection of such a length of time, in all respects so pleasant and instructive, and now forever dissolved, I should do injustice to my own feelings, if I should confine myself to a mere formal response to the sentiments which have been so appropriately expressed by the gentlemen of the Bar.

Since the last term of this Court, by the dispensation of an all-wise Providence, he has been called to the world of his fathers, prematurely, we shall be ready to say, when we regret the loss of what a few years more of life and health, if they had been spared, might have given to our common country, and especially to the profession to which his life had been devoted; but we can hardly say prematurely, when we look to the monuments of learning and industry which he has left, or to the wide-spread fame which rests as a living glory on his memory. He has been called from the scene of his labors full of honors and ripe with the fruits of a well-spent life.

Judge Story, with an intellectual temperament, which perhaps originally inclined him to the more graceful and attractive pursuits of general and polite literature, early applied himself to the severer studies of the law; and without wholly abandoning the cultivation of elegant letters, as a graceful ornament in every profession of life, devoted the main energies of his mind to his chosen science. From the commencement of his professional studies, this became the great business of his life, and was continued with unwearied perseverance to its close. From such long and persevering devotion, continued with a zeal that never cooled, I may say with an enthusiasm that never faltered, much might be naturally expected even from common powers of mind. But when that patience of labor that asked for no repose, was united as it was in him with extraordinary quickness of apprehension, a remarkable tenacity of memory and rare maturity of judgment, great effects might naturally be expected. The result certainly has not disappointed what might have been the most sanguine anticipations of his friends. He has placed himself among the very greatest lights of jurisprudence. If we may rank him with a Parsons, a Marshall and a Kent of our own country, without apprehension that he will suffer by the comparison, so we may place him in company with the greatest names in jurisprudence that have adorned the annals of that country from which we have derived the body of our common law. There are few who will not admit that he was a fit companion for the Hales and Holts, the Hardwicks and Mansfields, who have illustrated the law in the land of our fathers. In the monuments of learning and industry which he has left behind him, he far excels any of them. His juridical works, including his judgments pronounced in litigated causes argued before him in the Circuit Court, together with his elementary treatises on various titles of the law, fill nearly thirty large volumes, the exclusive productions of his own mind, exclusive of his numerous and often very elaborate opinions comprised in the series of the Reports of the Supreme Court, extending

through a period of thirty-four years. Few men, of whatever fertility or industry in any department of human learning, have ever written more. No magistrate and no author in any age has enriched the jurisprudence of the common law by so great an addition to its treasures, whether we regard his works in their actual amount or the variety of the subjects which they treat. Called upon by his official station to administer every branch of the law, his judicial opinions cover the whole ground of jurisprudence, and he has treated them all with such affluence of learning, and accuracy of discrimination, that it is difficult to say with what department of the law he was most familiar. Whether he is dealing with the abstruse and technical points of the old common law, or the complicated and subtle, as well as the liberal and enlarged principles of Equity, or again with the delicate and difficult constitutional questions which arise out of our mixed and complex system of simple and confederated governments, or with those great subjects of international law which grow out of a state of war, and arise in the prize jurisdiction of the admiralty, his knowledge seems to be equally intimate and exact in all.

On all these matters, so various and important, he has been called upon officially to form and deliver opinions, in which private rights were involved and complicated, not only with great principles of law, but often with great public and national interests. It would be giving high praise to any magistrate to say that he exhibited intellectual endowments equal to the work. But in saying so much, I shall, I trust, be justified in adding, that this would not be awarding the full measure of praise that may justly be given. On all these he has exhibited a depth of learning, an acuteness of discrimination, a profoundness of judgment, and a fertility of illustration which, all together, have been equalled by few magistrates of any age, and been surpassed by none.

It may be too much to expect of any man, however wide his learning and however penetrating his judgment, that every decision made in the course of a long and laborious judicial life, should be free from all error. Never to fail in judgment, does not belong to the condition of humanity. And if it shall hereafter appear on a more profound and critical examination, that error has in some cases crept into his judicial opinions, it will, I believe, also be found that he has left as great a number of judgments behind him, which will remain to future ages permanent landmarks of the law, as any other Judge that ever sat on the Bench in this country or in England.

But there is one quality in the judicial opinions of Judge Story, in which, if they are not altogether preëminent, they are not surpassed by those of any other Judge in the annals of jurisprudence. If there be a latent error in them, they usually themselves furnish the means by which it may be detected. For such was his conscientious diligence, the extent and profoundness of his learning, and the fertility of his mind, that the subject was seldom dismissed until it had been analyzed with the most thorough exactness, until all its analogies and distinctions had been critically examined, the whole dissected by a most subtle and accurate logic, and over all had been thrown the light of all the learning that pertained to the matter. So that if the reader hesitates as to its conclusion, the exuberant learning with which the opinion overflows, will lead him to all the law which is applicable to the subject. So thorough and exhausting is the examination in some of his opinions, that

they may be studied and relied upon both as elementary and didactic commentaries, and as copious and complete disquisitions on the particular points of law involved in the cases, so that the most careful researches into the sources of the law will add nothing to the fulness of the discussion. It may well be doubted whether any magistrate in any age ever has pronounced more judgments of this character, equally distinguished for the variety and extent of learning, by which they were illustrated, and the profound analysis by which both the rules of law and the judicial decisions bearing upon them have been reduced to their simple elementary principles.

But it is not only by profound and learned judgments that this eminent magistrate has enriched the science to which he devoted his life. He has given to the profession a large number of elementary treatises, or commentaries on various titles of the law, at once so simple and clear in the method, that the unlearned may read them with the most easy and perfect comprehension of the whole matter that is treated, and at the same time so copious, exact and searching in the analysis and discussion of principles and cases, as leaves nothing to be desired by the learned. It is when we regret the loss of other works of the same character which we were led to expect from his learning and diligence, that we are constrained to say in our deep regret and sorrow, that this great light and ornament both of his country and of his profession has been prematurely taken from the scene of his labors.

From the contemplation of the great learning and laborious diligence which distinguished him as a magistrate, we may turn with singular satisfaction to the manner in which he discharged the various duties of his high and responsible office. All who have practised in his Court will bear witness to the uniform urbanity of his manner of presiding at trials. It was an urbanity that was extended to all. But to the younger and more inexperienced members of the Bar, on their first introduction to the Court, it was something beyond mere official civility. It was marked with that gentleness and indulgence that seemed to belong more to the partial favor of a parent than the severe gravity of a Judge. And it was perhaps owing to this gentleness and suavity of manner in the presiding Judge, that in the sharp conflicts which so frequently arise in the contentions of the Bar, so few occurred before him, which left any root of bitterness behind them.

On this occasion it belongs more appropriately to me to speak of him as a magistrate, but I cannot conclude this imperfect tribute to the memory of a good and great magistrate without adding a few words of his character as a man. Great talents and great acquirements extort our admiration to a certain extent, with whatever moral qualities they may be combined. But we render our homage with cheerfulness and pleasure, only when we find them united with purity of personal character, unspotted integrity of life and elevation of moral sentiment, that bear a just proportion to the endowments of the mind. On the unstained purity and moral elevation of Judge Story's character as a private individual and a member of society, the memory of his friends may dwell with unmixed pleasure. The moral frame of his mind had its foundations deeply laid in religious principle. He lived and died in the faith of a Christian, with a deep and habitual persuasion that



he was both an accountable and immortal being. It was this deep and abiding faith that lent its soft and beautiful colors to the whole tenor of his life, which gave energy to every effort which might improve and elevate the moral dignity of his fellow men, which in the evening of life led him to seek a place of repose for the dead, which by its rural and tranquil beauties might associate images of gentle and melancholy tenderness with the most solemn feelings that ever enter into the heart of man, and finally prompted him, when the spirit was in his last moments flickering over his mortal and expiring body, in the last audible words he uttered, to commend his soul to the God who gave it. On a life thus spent and thus closed, surely his friends may look back with unmingled pleasure.

The death of such a man at any period of his life is felt with deep sensibility, and more so when as we fondly hoped that his days might have been prolonged through many years of usefulness. It was the will of Providence that it should be otherwise, and all that is left for us is to follow him to his grave with unavailing regret, and accumulate honors so richly due to his merits, the justice of which, I trust, will be acknowledged by a distant posterity.

His Honor Judge Woodbury then subjoined, in substance, as follows:—

These resolutions, Gentlemen of the Bar, shall be entered upon the records. The appropriate tribute to the memory of my predecessor, which has been paid by you on this occasion, is most fully concurred in by the whole Court.

My associate has responded in feelings, common to us both, on account of the lamented decease of Judge Story, and also in those remembrances and delineations of his character—on which a longer and closer intimacy with him qualified and rendered it more fit for my associate to dwell.

All of the profession, however, in this Circuit, and to some extent in the Union, and indeed, wherever an enlarged jurisprudence, connected with commercial, constitutional and national topics, exists—may well take the liberty to express—what they cannot but feel—a deep sense of the great loss they have sustained.

The eloquence and learning, which in him have adorned this Bench for near a quarter of a century, and still longer that of the Supreme Court of the United States, the tomb has now closed over forever. You will no more listen to the tongue, that so long and so ably vindicated here the jurisdiction and powers of the General Government; and while it defended innocence with ardor, and relieved the oppressed by a most liberal exercise of equitable principles, it lost no fit occasion to expose injustice and punish guilt.

But it is some consolation, that such men do not live in vain for the future any more than the past in respect to their fellow men. The courtesy and blandness of manner in the deceased must long be remembered by most of us as models for imitation. His pure life—unspotted as the ermine of the justice he administered—his useful toils in serving his country and his profession, have sown seeds which will long yield to both a rich harvest, and have met with those rewards from grateful millions, which will long encourage our youth as well as more advanced age to emulate his example. It is fortunate, that the records of much of his various labors will remain for the edification of us all. And, painful to many as has been the death of one distinguished by so many excellencies and so much useful

ness, it is a source of gratitude, that his efforts were spared to the world so long, and till they had accomplished so much; and that the fruits of them can never die, while the law endures as a science, and genius, industry and ambition — nobly employed — are held in veneration among men.

#### PROCEEDINGS IN NEW HAMPSHIRE.

KEENE, N. H., September 13th, 1845.

The Alumni of Dane Law School in attendance upon the session of the Court of Common Pleas for the County of Cheshire, having received intelligence of the death of the Hon. Joseph Story, late Dane Professor in that institution, this day met and appointed the following officers: William P. Wheeler, President; William L. Foster, Vice-President; and A. H. Bellows and George Walker, Secretaries. A committee being appointed to draft resolutions expressing the sense of the meeting, of the deep loss which they, in common with the profession generally, have sustained in this event, the following resolutions were presented: —

*Resolved*, That we have received with unfeigned sorrow the melancholy tidings which have brought us together; that while we are sensible of the deep loss which the profession and the country at large have in this event sustained, the death of Mr. Justice Story is to us a cause of peculiar sadness. In him we mourn the loss of a revered personal friend, of the fascinating instructor, who has shed the sunlight of his own character upon the arduous paths of our professional study, of the ripe and ready scholar, the learned Jurist, the Commentator, the expounder and supporter of our National Constitution and the general law.

*Resolved*, That we cannot permit this occasion to pass without expressing the high respect and affection which we have ever entertained for Prof. Story, and our sympathy with our Cambridge brethren, at present members of the School, in a loss which is peculiarly theirs.

*Resolved*, That a copy of these resolutions, signed by the officers of the meeting, be transmitted to Prof. Greenleaf, together with assurances of our highest respect.

WILLIAM P. WHEELER, *President*.  
WILLIAM L. FOSTER, *Vice-President*.

A. H. BELLOWES, }  
GEORGE WALKER, } *Secretaries*.

#### PROCEEDINGS IN RHODE ISLAND.

At a meeting of the members of the Bar of the Circuit Court of the United States for the District of Rhode Island, holden on the 17th day of November, A. D. 1845, at the United States Circuit Court Room, Albert C. Greene, of Providence, having been appointed Chairman, and George Turner, of Newport, Secretary, the following resolutions were unanimously passed: —

*Resolved*, That the members of this Bar deeply lament the death of the Hon. Joseph Story, who for so many years held and adorned the office of a Justice of the Supreme Court of the United States.

*Resolved*, That, in common with the whole nation, we deplore the loss of his extraordinary endowments, of his profound and various learning, and of his zealous and untiring

industry, displayed alike in his judgments and writings, which, while they have reflected the highest honor upon the Bar and Judiciary of his country, have established for him a fame coextensive with the jurisprudence of the civilized world.

*Resolved*, That whilst, as professional men, we entertain the profoundest respect for the talent, and learning, and uprightness, by which his long judicial career was illustrated, we claim, as friends, to dwell with grateful veneration, and affectionate ardor, upon the rich graces of his personal character,—upon that integrity which knew no stain,—that benevolence which shone upon all men, whatever might be their fortunes in life,—that rare urbanity and attractive gentleness which lent so deep a charm to all his intercourse with the Bar, and with society.

*Resolved*, That we are grateful to Heaven, that this pure and learned minister of Justice was spared to the world so long, and that we rejoice to think that his unsurpassed learning, in almost every branch of the law, is destined to shed its light to the most distant times upon every land, which is the abode of civilization and freedom.

*Resolved*, That the District Attorney be requested to communicate these resolutions to the Honorable Circuit Court, at the opening of the term, and to ask that they may be entered on the journal of the Court, and that a copy of the same, signed by the Chairman, be transmitted to the family of the deceased.

A. C. GREENE, *Chairman*.

PROCEEDINGS IN NEW YORK.

At the opening of the Assistant Vice-Chancellor's Court in New York on Friday, the death of Judge Story was announced by Mr. George Wood, and on his motion, after some appropriate remarks by the Assistant Vice-Chancellor, the Court was adjourned as a tribute to the memory of the deceased.

In the United States Circuit Court in the same city, B. F. Butler, Esq., District Attorney, made a similar motion to the above, and after some appropriate remarks by Judge Nelson, that Court was also adjourned. In both Courts it was directed that the motion and order be entered on the minutes.

PROCEEDINGS IN PENNSYLVANIA.

*United States District Court—September 13th, 1845.*

Before Judge RANDALL.

After the transaction of some unimportant business this morning, the Hon. Thomas M. Pettit, United States District Attorney, announced the death of Judge Story, of the Supreme Court, and moved that the usual testimonies of respect should be awarded to the memory of that distinguished jurist.

Mr. Pettit's remarks on this occasion were exceedingly appropriate, and were listened to with profound attention by the Bench and Bar. He said—"It is my melancholy duty to announce the death of the Hon. JOSEPH STORY, one of the Justices of the Supreme Court of the United States. The tribute, by the allowance of a motion for adjournment, of the accustomed mark of respect for the memory of one who had occupied so high a judicial station under the Federal Constitution, I am sure this Court will most readily award. But though such a step is peculiarly appropriate, yet on this occasion I may be indulged in making the remark that any merely formal expression of esteem and veneration would fall

immeasurably short of doing justice to the feelings of this Bar and of this community. Mr. Justice Story was so distinguished for eminent ability, for extraordinary learning, for upright feelings, and dignified deportment in his great office, that his death will be lamented as a national loss. His elegant accomplishments in general literature, his profound acquirements in the standing of his profession, his vigorous powers of just discrimination, his ample experience in the performance of important official duty, all conspired to confer a lustre even upon the first judicial tribunal of our country, and contributed in a high degree to enlarge and define the limits, and to increase and extend the usefulness and reputation of the science of jurisprudence.

"It is in relation to his character and services as a Judge, that in this place, we are more directly called upon to speak; but his untiring industry and uncommon condition, his fine taste and correct judgment were brought most powerfully and successfully into requisition, in a series of works, which have attracted the attention of Europe, as well as of this entire Union, and which, independently of the labors of a long judicial life, would have won for the author the highest rank, reputation and authority, as an expounder of the law.

"While, then, the profession and the country will undoubtedly manifest in proper modes the just and full sense which is entertained of the loss they have sustained, I beg leave here to move that in token of respect for the memory of so great a Judge, the public business be now suspended, and that the Court stand adjourned till Monday next."

The motion was granted by Judge Randall, with a few appropriate observations, and the Court thereupon adjourned.

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#### PROCEEDINGS IN TENNESSEE.

September 22d, 1845.

The Circuit Court of the United States for the Middle District of Tennessee met pursuant to adjournment; present the Hon. John Catron and the Hon. Morgan W. Brown. After the record was read and signed, Francis B. Fogg, Esq., announced to the Court the intelligence of the death of the Hon. Joseph Story, and presented the proceedings of the Bar in a speech of some minutes, expressive of the high respect which was universally entertained for the deceased by his countrymen, the deep obligations which the Bar were under for his labors in the walks of their profession, by which a reputation had been gained by the illustrious deceased, solid and lasting as it was bright and glorious, the service which he had rendered in the high judicial office where so long he faithfully and impartially administered the laws of his country, his contributions to the cause of letters, and, above all, the impartiality, firmness, and integrity which distinguished his public, and the kindness and benevolence which graced his private conduct. To which the Hon. John Catron made the following reply:—

The Court has heard with deep feelings of sorrow the announcement of the melancholy event which has called forth the resolutions read at the Bar. Although

an event in the course of nature, yet it has come upon us unexpectedly, nor could it have lessened the profound regret we feel, had it been less sudden. One is taken from amongst us who, for more than the third of a century, has occupied one of the highest places in the judiciary of the country, and whose genius and learning had won for him a reputation both high and lustrous; and whose judicial opinions and writings had made their author so well known to the American Bar, that he stood in the relation of a personal acquaintance to its members; and had made his name not only familiar to the body of the people of his own country, but to the professional and enlightened men of the civilized world. To some of us he was well known in the relations of social life, in which he was eminent for his entertaining and agreeable qualities.

That a deep sense of sorrow should be felt when one thus virtuous and accomplished is stricken down by death, is in accordance with the best feelings of our nature; and that an expression of those feelings, and a just tribute of regard for the deceased should be preserved on the records of the courts of justice of which he was so high an ornament, is most proper.

We therefore order the resolutions to be entered of record, and that the Court adjourn for the day.

The Court then adjourned.

September 22d, 1845.

The Circuit Court of the county of Davidson met pursuant to adjournment, the Hon. Thomas Maney presiding, and after the record was read and signed, Francis B. Fogg, Esq., presented the proceedings of the members of the Bar relative to the death of the Hon. Joseph Story, and requested that they be entered on the minutes of the Court.

The Court ordered that the proceedings be entered upon the minutes of the Court, and then adjourned.

#### PROCEEDINGS IN LOUISIANA.

*Circuit Court of the United States, Fifth Judicial Circuit, District of Louisiana,  
New Orleans, November 3d, 1845.*

The Hon. THEODORE H. McCaleb, presiding.

On the opening of the Court this morning at 10 o'clock, A. M., E. Warren Moise, Esq., rose, and after a few eloquent and appropriate remarks, moved an adjournment of the Court, as a tribute of respect to the memory of the late Mr. Justice Story. This motion was seconded by Mr. C. Roselius, Esq., late Attorney-General of this State. In granting the motion, his Honor, Judge McCaleb, made the following remarks:—

In yielding, as I do, a ready compliance with the motion which has just been made, I shall, I trust, be excused for making a few remarks.

I am not so presumptuous as to imagine that I can add any thing to the praise so justly merited, which has already been bestowed upon the character of him

whose memory it is the object of the motion to honor. The duty of portraying the character and recounting the services of Mr. Justice Story, has already devolved upon those, who, from intellectual superiority, and from long personal acquaintance with his character, were peculiarly well qualified to perform it. It is my wish simply, that on the present occasion, the sentiments of admiration and gratitude for the long and signal services of the great jurist, expressed in such eloquent and pathetic terms by his immediate neighbors and friends, may find in *our* bosoms a cordial response. Though far from the scene of his active and zealous efforts to advance the great interests of the science in which he was so long known and recognized as one of the ablest preceptors, we have, as Americans, been equally sharers in the benefits which his unequalled labors have diffused over our vast Union.

It is peculiarly fit and proper that the Bench and the Bar, throughout our widely extended country, should do honor to the memory of Mr. Justice Story.

They are daily and hourly constrained to acknowledge the obligations under which he placed them, by the prodigal liberality with which he has everywhere dispensed the inexhaustible treasure of his great intellect; and it is impossible for those of us who are called to minister at the altar of justice within the range of federal jurisdiction, adequately to express the gratitude we must ever feel for the benefits which his matchless assiduity, through a long life, has conferred on every branch of legal science. It is a source of pride to us as Americans to know that his opinions are cited as authority before the highest common law tribunals of England. He has long since, in admiralty law, taken his place with Stowell, Tenterden, and Robinson, who have shed so much light upon this particular branch of jurisprudence. As a Chancellor, he will descend to posterity in the "glorious company" of a Loughborough, an Eldon, a Cottenham, a Brougham, and a Lyndhurst, — eminent among all, inferior to none. While we express the solemn conviction that his place cannot soon be supplied even from our widely extended country, rich as it may be, and as it undoubtedly is, in intellectual greatness and legal learning, let us hope that those who are called to minister at the altars of justice, while they cannot expect to equal him in his comet-like velocity, will strive at least to imbibe his wisdom, and follow in the luminous "track of his fiery car."

Upon the conclusion of the above remarks from the Judge, Isaac T. Preston, Esq., Attorney-General of the State, moved that the motion made by Mr. Moise, with the accompanying remarks of the Judge, be spread upon the record, and that the same be published. The Court then immediately adjourned until to-morrow morning at 10 o'clock, A. M.

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#### PROCEEDINGS IN MISSISSIPPI.

Jackson, November 5th, 1845.

The members of the Bar in attendance upon the Circuit Court of the United States for the Southern District of Mississippi, assembled in the Court room of the Capitol, for the purpose of rendering a tribute of respect to the memory of the

Hon. Joseph Story, late an associate Justice of the Supreme Court of the United States.

On motion, the Hon. Samuel J. Gholson, Judge of the Southern and Northern Districts of Mississippi, was called to the Chair, and A. Hutchinson, Esq., appointed Secretary.

Daniel Mayes, Esq., moved that a committee of three be appointed to prepare and report appropriate resolutions at an adjourned meeting to be held at five, P. M. on Saturday next; and Messrs. Samuel S. Boyd, Daniel Mayes, and H. T. Ellett, Esqrs., being appointed the committee, the meeting adjourned accordingly.

Saturday, November 8th, 1845 — The meeting met pursuant to the adjournment.

The committee, by Samuel S. Boyd, Esq., their Chairman, reported the following resolutions, which were unanimously adopted : —

1. *Resolved*, That the Bar of the Federal Court, in Mississippi, have heard with profound grief of the death of Judge Story, late an associate Justice of the Supreme Court of the United States.

2. *Resolved*, That the community and country at large share in the sentiment and sympathies of the Bar on this great bereavement. He was raised to a seat on the Bench of our highest tribunal before he had passed the middle term of life. Placed thus in trying proximity to Marshall, Johnson, Washington, and Livingston, he soon gave evidence that those great founders of our National Jurisprudence had received an equal by their side. From that moment his career was one of progress, and the highest pinnacles of the profession, hitherto reached, were but halting places in his upward path. There was no department of the law, either of our own or other lands, of ancient or modern times, which he did not compass. As familiar with Justinian as with Coke, the libraries and adjudications of every nation, having organized tribunals, were carefully examined, and made to increase the unexampled riches of his legal learning. He attained in his own person, whatever of distinction the greatest jurists and magistrates have separately achieved, in their selected and favorite fields of labor and renown.

Not inferior to Coke in a knowledge of the ancient common law; superior to Mansfield in the application of its principles to the new circumstances and combinations of social life and the commercial world; unsurpassed by Stowell in the decisions of the Prize and Admiralty Courts; he went beyond Eldon in the ample stores of his Equity learning, and in the exactness and comprehensiveness of his Equity decrees. And to all this was superadded such an affluence of acquirement, such a copiousness of language and illustration, that he may be truly said to have filled his adjudications with as much of legal science as the matter and space would allow, and to have stated them in terms of as much eloquence as the severity of the subject would bear.

In administration from the Bench, he exhibited the best example in legal history, of dignity without assumption, gravity without pretence, tact without cunning or partiality, courtesy and urbanity without condescension, readiness without pertness or presumption, and industry that knew no limit but in the perfect mastery and exhaustion of his subject.

3. *Resolved*, That the republic of letters has sustained a loss in the death of Judge Story, scarcely inferior to that which has covered the Bar with grief. As an author, he had not only surpassed almost every living name, in the variety and extent of his legal writings, but in the more attractive departments of general literature, his labors were extensive and his success distinguished. He will ever be regarded as the most accomplished of scholars and writers, and the most copious, elegant and profound of commentators.

In the chair of the professor, he exhibited, in rare combination, unexampled stores of legal science, coupled with all that is classical and refined in acquirement. He made the law attractive in its driest divisions, and shed about it a grace and elegance that charmed the pupil, and inspired him with all the enthusiasm of his teacher. He left nothing untouched, and there was nothing unfinished in his lecture.

4. *Resolved*, That while we are filled with gratitude to Providence, for the goodly length of days which was allotted to him on earth, we cannot cease to deplore the loss to society and mankind of so bright and signal an example. Without stain or reproach, fulfilling all the relations of life, exact in all his dealings, just in all his intercourse, he exhibited the most attractive model of the citizen and the man. His social qualities

were nearly without parallel. Full of the most exuberant vivacity; of the rarest conversational powers; of the kindest nature; his wit and humor without irony or sarcasm, his cheerfulness and loquacity were contagious, but never light or frivolous. His countenance was the index of his soul, it glowed with benignity; his look was a perpetual smile, and his smile a perpetual benediction. And this rare combination of all that is great and good in man, was hallowed and crowned, and rendered wellnigh divine, by the sacred influences of a Christian belief and a Christian practice.

5. *Resolved*, That the foregoing resolutions be presented to the Circuit Court, now in session, with the request that they be spread upon the records, as a perpetual memorial of our affectionate regard for the memory of the deceased.

6. *Resolved*, That the proceedings of this meeting be published in the newspapers printed in this city.

And then the meeting adjourned.

S. J. GHOLSON, *Chairman*.

A. HUTCHINSON, *Secretary*.

#### PROCEEDINGS OF THE CORPORATION OF HARVARD UNIVERSITY.

At a meeting of the President and Fellows of Harvard College, upon special notice, on Thursday, the 11th day of September, 1845:—

Being informed of the decease of our late associate, the Hon. JOSEPH STORY, which took place at his late residence in Cambridge, last evening, Wednesday, 10th September, instant, and a special meeting having now been called to take the same into consideration, it is thereupon

*Resolved*, That we have received with feelings of profound sorrow, intelligence of the decease of our late beloved and most respected associate, the Hon. JOSEPH STORY, the oldest member of this Board. Whilst he may be more extensively known abroad as an eminent civilian, as the senior Judge of the highest judicial tribunal of the Union; here, and to us, he was more intimately known, and thoroughly appreciated, in daily intercourse, as an ardent and sincere friend of this College, always zealous in his coöperation with others in promoting its honor and prosperity, ever active in devising and executing measures to promote its highest usefulness, by the cultivation and diffusion of sound learning in all departments, through the whole community, a friend, on whose energy, zeal, and firmness, his associates could at all times rely, with entire confidence.

*Resolved*, That we sincerely sympathize with the bereaved widow and family of our deceased associate, in the irreparable loss which they have sustained, and this sympathy, we are confident, will be deeply participated in, not only by the numerous personal friends of the deceased, but by the very large community throughout which he was known and respected.

*Resolved*, That, as an expression of our respect for the memory of the deceased, and our sympathy in the sorrows of his afflicted family, it would have been gratifying to us to attend the funeral of our associate, with the officers and members of the College, as a body; but having learned that a private funeral would be preferred, we cheerfully yield to that intimation, and will therefore attend the funeral only as individuals, and personal friends of the deceased and of his family.

Taking into view the conspicuous and influential position held by our deceased associate, in this College, both as a member of this Board, and as the head of the Law School, now so important a department of the University, and considering how deep an impression the loss of such a man, under such circumstances, is fitted to make upon the hearts and minds, not only of the law students immediately under his care, but of all the officers and members of the University, and that it seems alike required by a just respect for the memory of the deceased, and a proper regard for the feelings of the living, that the event be duly commemorated by the College, by a solemn and appropriate service, adapted to the occasion, therefore



*Resolved*, That a time be set apart, as soon as conveniently may be, for such a service, which may be attended by all the officers, instructors, and members of the College, and that upon that occasion, Mr. GREENLEAF, Royall Professor of Law, and now surviving Professor in the Law School, be requested to deliver an address commemorative of the life and character of the deceased.

*Resolved*, That the President of this Board for the time being be requested to communicate a copy of these proceedings to the widow and family of the deceased.

S. A. ELIOT, *Secretary pro tem.*

#### PROCEEDINGS OF THE LAW SCHOOL OF HARVARD UNIVERSITY.

At a meeting of the members of the Law School of Harvard University, holden September 11th, 1845, to take some measures relative to the decease of the Hon. JOSEPH STORY, late Dane Professor in that Institution, the following resolutions were adopted:—

*Resolved*, That we receive the sad intelligence of the death of Mr. Justice Story with the profoundest sorrow, and that it is our duty, as well as our only satisfaction, to pay some tribute of respect to the memory of a man, whom all have regarded with admiration for his brilliant powers and unequalled learning; and whom we must ever remember for those personal qualities, which make us regret his death as the loss of an instructor and a friend; for those generous principles, and that natural ardor, which lent to his teachings the glow of conversation; for a temper equal, placable, and gentle, almost beyond example; for his affectionate and ready sympathy; and for that open and genial benevolence, which made his presence a delight, and which leaves the memory of him without one kind action omitted, or one word to be recalled.

*Resolved*, That we wear crape on the left arm for the space of thirty days; and that Professor GREENLEAF be requested to deliver an eulogy on Judge STORY, before the members of the School, at such time as he may designate.

*Resolved*, That a committee be appointed to consider and report on the expediency of procuring a painting, bust, statue, or other memorial, of Judge STORY, on behalf of the Law School.

*Resolved*, That these resolutions be communicated to the family of the deceased, with the expression of our sympathy for their sudden and irreparable bereavement.

*Resolved*, That these resolutions be forwarded to the Daily Advertiser, Boston; the Tribune, New York; and the National Intelligencer, Washington.

A. BURLINGAME, *President.*

M. G. COBB, *Secretary.*

#### PROCEEDINGS OF THE TRUSTEES OF MOUNT AUBURN CEMETERY.

At a meeting of the Trustees of the Cemetery of Mount Auburn, held at the office of Charles P. Curtis, Esq., on Friday, September 12th, 1845, Dr. Bigelow offered the following resolution, which was unanimously adopted:—

The Trustees of Mount Auburn Cemetery, deeply affected by the event which has taken from them their presiding head, and from society one of its most beloved and distinguished ornaments, are anxious that some suitable memorial should be placed, in remembrance of his worth, upon a spot which was beloved and frequented by him in life, and to the improvement of which he devoted much of his time and ardent interest.

Therefore, *Voted*, That the Trustees offer to the friends and fellow citizens of the deceased, a place in the new Chapel now in the progress of erection at Mount Auburn, for the reception of a marble statue of the late JOSEPH STORY, when such a work, worthy of the character of its original, shall have been completed, through the contributions of the public.

## No. III.

## COLLECTION OF OPINIONS OF MY FATHER'S WRITINGS.

THE following Collection of extracts, from the opinions of Judges, the resolutions of the Bars of various Courts, articles in reviews, addresses and text-books, will serve to show the universal and enduring esteem in which these works are held. The Collection was not prepared by me. It originally appeared in the Advertising Sheet of Messrs. Little & Brown, and I have thought it not unworthy of preservation in a more permanent form.

## GENERAL NOTICES.

"In regarding the deceased [Mr. Justice Story] as an author, jurisprudence mourns one of her greatest sons,—one of the greatest not only among those of his own age, but in the long succession of ages, whose fame has become a familiar word in all lands where the law is taught as a science, whose works have been translated and commented on in several of the classical languages of the European Continent, and have been received as authorities throughout the civilized world. It was his lot, while yet alive, to receive as from a distant posterity, the tribute of foreign nations to his exalted merit as a jurist." *From the Resolutions of the Suffolk Bar, offered by Hon. Daniel Webster.*

"I think all the treatises of my friend Story are, upon the whole, the most finished and perfect of their kind, to be met with in any language, foreign or domestic; and for learning, industry, and talent, he is the most extraordinary jurist of the age." *Extract from a letter of Chancellor Kent to the editor of the Louisiana Law Journal, July 31, 1841.*

"Of these works [Agency, Partnership, Bills, and Promissory Notes] it is enough at present to say, that they exhibit the unabated fulness of his learning, and bear the strong impress of his comprehensive and vigorous mind. Had he written no others, these alone would enroll his name among the first legal authors of the age." *Professor Greenleaf's Eulogy.*

"We confidently recommend also to the careful study, no less of the British than of the American legists, the 'Commentaries on the Conflict of Laws,' and the 'Commentaries on Equity Jurisdiction,' by the same author. As to his very able Commentaries on the American Constitution, they, of course, will be studied on this side of the Atlantic; but we doubt not the bright day of unprejudiced,

untrammelled, philosophical research will soon prevail much beyond these limits; and that the scholars, at least, of that noble country to which we are so closely allied by various ties, will also unite with us in admiration, praise, and study of this work." *Hoffman's Legal Outlines.*

"As a lawyer, a judge, a professor, he was always a jurist. While administering justice between parties, he sought to extract from the cause the elements of future justice, and to advance the science of the law. He stamped upon his judgments a value which is not restrained to the occasions on which they were pronounced. Unlike mere medals of curious importance to private parties only, they have the currency of the gold coin of the republic, with the image and superscription of sovereignty wherever they go, even in foreign lands." *From an Address before the Φ. Β. Κ. of Harvard University. By Charles Sumner, Esq. Boston, 1846.*

"When I think of the incalculable facilities which are afforded by his labors, I cannot but say with Racine, when speaking of Descartes, '*Nous courons; mais, sans lui, nous ne marcherions pas.*' Besides, it is he who has inspired in many foreign bosoms, reluctant to perceive aught that is good in our country, a sincere homage to the American name. He has turned the stream of the law reflux upon the ancient fountains of Westminster Hall, and stranger still, he has forced the waters above their sources, up the unaccustomed heights of countries alien to the common law. It is he, also, who has directed from the copious well-springs of the Roman law, and from the fresher fountains of the modern continental law, a stream of pure and grateful waters to enrich and fertilize our domestic jurisprudence." *From a notice of Judge Story in the Boston Daily Advertiser, by C. Sumner, Esq.*

"It is not so much the language of eulogy, as of simple truth, to say, that he died the most learned jurist of his age." *Western Law Journal, Cincinnati, v. 4, p. 45.*

"He was a thorough master of every branch of the law; he sported with the dryest technicalities, and was equally at home with questions that severely try the judgment, and appeal to the highest qualities of the mind. His fame is not his country's alone; it is coextensive with the common law; it reaches every state where the code of Justinian is known." *Law Reporter, v. 8, p. 244.*

"No magistrate and no author in any age has enriched the jurisprudence of the common law by so great an addition to its treasures, whether we regard his works in their actual amount, or the variety of subjects which they treat. . . . He has exhibited a depth of learning, an acuteness of discrimination, a profoundness of judgment, and a fertility of illustration, which, altogether, have been excelled by few magistrates of any age, and surpassed by none. . . .

[His treatises] "at once so simple and clear in method, that the unlearned may read them with the most easy and perfect comprehension of the whole matter that is treated, and at the same time, so copious, exact, and searching, in the analysis and discussion of principles and cases, as leaves nothing to be desired by the learned." *Remarks of his Honor Judge Ware, in reply to the Resolutions of the Bar, presented at the October Term (1845) of the Circuit Court of the United States, for the Maine District.*

"The various, well-digested, happily-constructed performances of Judge Story,

in the line of his profession, . . . are a rich treasure for his country and for civilized man in every region, and will be gratefully admired and cherished, as long as the light and love of all good learning shall remain unextinguished." *Hon. Judge Davis's remarks at the meeting of the Bar of the Circuit Court, for the District of Massachusetts.*

"A series of works which have attracted the attention of Europe, as well as of this entire Union, which, independently of the labors of a long judicial life, would have won for the author the highest rank, reputation and authority as an expounder of the law." *Remarks of Hon. Thomas M. Pettit to the Philadelphia Bar.*

"He has surpassed almost every living name in the variety and extent of his legal writings." *Resolutions of the Bar of the Southern District of Mississippi.*

"He explored with extraordinary powers of analysis the learning of the past, embodying and systematizing those great principles of jurisprudence which illustrate his decisions as a Judge, and give imperishable value to his works as an author." *Resolutions of the Bar and Officers of the Supreme Court of the United States, offered by Hon. John Davis, of Massachusetts.*

"His decisions and writings have shed a light upon constitutional law and general jurisprudence, which will endure so long as civilization exists." *Resolutions of the Providence Bar, offered by Hon. R. W. Greene.*

"That master mind whose very dictums the greatest lawyers have revered." *New York Legal Observer*, v. 3, p. 364.

"The works of Mr. Justice Story, . . . which have given to American jurisprudence the highest name throughout the world, and to their author everlasting renown." *Western Law Journal*, (Dec. 1847,) v. 5, p. 107.

"That desirable union between the respective methods of the foreign and the English jurists, . . . which the lamented Story has so admirably exemplified." *Duer on Insurance*, v. 1, Pref. p. v.

"English justice admits, with frankness and candor, and with no feeling but that of respect and admiration, that he was of all men who have yet appeared, most fitted by the comprehensiveness of his mind and the vast extent and accuracy of his attainments, to compare the codes of nations, to trace their differences to differences of origin, climate, or religious or political institutions, and to show, notwithstanding, their concurrence in those great principles upon which the system of human civilization rests." *Hon. Daniel Webster, Pref. 3 Story's Rep.* p. ix.

"Mr. Justice Story has, in a series of valuable publications, not only enriched the library, but enlarged the horizon of the American lawyer. He has most fully verified by his success, an opinion we have long cherished, as to the superiority of the civilians, and those nourished in their conversation, as elementary writers, over the lawyers trained for practice in England." *Hon. H. S. Legaré. New York Review*, vol. 5, p. 286.

"The first five of these contracts, Agency, Bailments, Bills of Exchange, Promissory Notes and Partnership, are made the subjects of as many distinct elementary treatises by that indefatigable, learned and experienced jurist, Mr. Jus-

tice Story. We have been for some time familiar with them, and can confidently recommend them to the student as better adapted for his purposes, and indeed for those of practitioners, than any others which we are aware of being extant." *Warren's Law Studies*, 2d ed. p. 759. London, 1845.

"The profession of this and every other country has had the advantage of becoming acquainted with the admirable Commentaries on the law of Bailments, Partnership, Agency, Bills of Exchange and Promissory Notes. [Dr. Story] has conferred the greatest benefits on the jurisprudence of every country, by the tendency of his writings to promote the most advantageous study, and the most sound and useful application of it." *Burge's Commentaries on Suretyship*. London, Pref. p. iv.

"It is no mean honor to America, that her schools of jurisprudence have produced two of the first writers, and most esteemed legal authorities of this century; the great and good man [Judge Story] who has just been taken from us, and his worthy and eminent associate, the Professor Greenleaf. Upon the existing law of Contracts and the law of Evidence, more light has shone from the new world than from all the lawyers who adorn the Courts of Europe." *Law Magazine*, London, vol. 34, p. 350.

"It [Prof. Story's Inaugural Discourse] conveys a very high opinion of the author's abilities, both as a lawyer and a scholar, and presents an elegant and comprehensive view of the rise and progress of the English law." *Spectator*, (London,) 1836.

"The name of Story has shed so much lustre on the jurisprudence of his own country, and that of Europe, that I can never adequately express my share of the obligations he has conferred on both. Our judges cite him with language showing their high respect for his talents and learning. I have found in his writings more to satisfy minute inquiries, and impart the fullest information, than I have ever met with any where else." *From a letter of William Burge, Esq., Q. C., to Professor Greenleaf, April 1, 1843.*

"The system of subdivided study and labor may produce a Campbell, it could not produce a Pennefather; it may produce a Pollock, it could not produce a Robertson; it may produce a Follett, it could not produce a Berryer; it may produce a Sugden, it could not produce a Story; it may produce a Wilde, it could not produce a Webster or a Guizot." *Fraser's Magazine*, August, 1844.

"Mr. Justice Story, whose treatises, both on equity and law, evince such luminous and philosophical researches, and are written in such a high moral tone, and with such peculiar felicity of thought and expression, that in England they have taken their place in the first rank of law classics." *A Treatise on the Admissibility of Confessions, &c., by H. H. Joy, Esq., (Pref. p. vi.) Dublin, 1842.*

"His legal reputation in America rests, perhaps, upon a work little known in this country,—his Commentaries upon the Constitution of the United States. This was followed, within a few months, by his Commentaries on the Conflict of Laws, and preceded by his admirable work on Bailments. These works, followed between 1833 and his death by treatises on the law of Principal and Agent, Bills

of Exchange and Promissory Notes, Equity Jurisprudence and Equity Pleading, have, from their fulness, their research, their candor, and the comprehensiveness which characterizes them, placed the name of Professor Story in the very first rank of the legal authors of the age." *Letters on the Present State of Legal Education, &c., by H. H. Joy, Esq., (Dublin and London, 1847,)* p. 125.

"Mr. Justice Story's books certainly rank as high, or higher than any other books that we have." *Ib.* p. 126.

"Lord Campbell, speaking of American as compared with English jurists, says, 'I really hardly know any name which we can so much boast of, as the Americans may that of Professor Story, and Chancellor Kent, and others of very great distinction.'" *Joy's Letters on Legal Education,* p. 124.

"He may not improperly be called the first legal author of his time." *Law Review, (London,)* v. 3, 245.

"In fluency of language, in countenance, and in amiableness of character, he strikingly resembled Alexander Von Humboldt. His ability is shown by the text-books on almost all branches of the law, published since his appointment to the professorship, which are classic in England, where they are cited as authorities." *Translated from the Conversations Lexicon "der Gegenwart," (Leipsic,)* Art. Story.

"Greater than any law writer of which England can boast, or which she can bring forward, since the days of Blackstone." *Lord Campbell's Speech in the House of Lords, April 7, 1843.*

"I have long known and respected your learned countryman, as one who does the greatest honor to his double country, I mean to America and to Jurisprudence." *Translation of part of a letter from Savigny to Theodore S. Fay, Esq.*

"Mr. Justice Story has established an enduring reputation amongst the lawyers of all countries by his Commentaries on the Conflict of Laws; whilst his works on Bailments and Equity are already exercising a formidable degree of rivalry with the best British books on these subjects." *London Quarterly Review, (Dec. 1840,)* v. 67, p. 32.

"There is scarcely a country possessing any thing like a system of jurisprudence in which his name and his writings are not known and respected; and his judicial career obtained for him a reputation which extended because it exercised an influence, beyond the limits of his own country. But in no part of the world were his learning and his attainments more highly appreciated than in England. His writings were placed in the libraries of our Inns of Court; they have been considered the most safe, as well as the most useful guides, in enabling the student and the advocate to acquire the best accurate information on those great questions of commercial and international law, of which they treat. His writings were continually cited from the Benches of our Courts of Law and Equity, in terms of the highest approbation. . . . [His treatises] will contribute to restore the law of England to its former rank as a science which is to be studied, with a view of storing the mind with great principles, and will rescue it from its present reproach." *Law Review, London,* v. 3, pp. 377, 378.

"I survey with increased astonishment your extensive, minute, exact and fami-

Bar knowledge of English legal writers in every department of the law. A similar testimony to your judicial learning, I make no doubt, would be afforded by the lawyers of France and Germany, and we should all concur in placing you at the head of the jurists of the present age." *Extract from a letter of Lord Campbell to Mr. Justice Story, Sept. 29, 1842, quoted in Sumner's Φ. B. K. Oration.*

"America has lost one of her greatest men in the person of the celebrated jurist, Judge Story, who died at Boston on the 10th of September last. Judge Story is well known, not in England only, but in every part of Europe, by his Commentaries on the Constitution of the United States, his Treatise on the Conflict of Laws, and other legal works of the highest reputation." *London Spectator, October 18th, 1845.*

"This opinion" [*Peters v. Warren Ins. Co.* 3 Sumner, R. 389, where he dissented from the case of *Devaux v. Salvador*, 4 Adolph. & El. 420,] "will at least neutralize the effect of the English decision, and induce any of their Courts to consider the question an open one." *Extract from a letter of Lord Denman, Chief Justice of the Court of Queen's Bench, to C. Sumner, Esq.*

—"That eminent American jurist, Mr. Justice Story, himself one of the most elaborate and successful legal writers of his age, and whose works are continually cited by both Bench and Bar in their country, [and] with the utmost respect in this country." *Blackwood's Edinburgh Magazine, (Feb. 1847,) vol. 61, p. 144.*

"A distinguished foreign jurist." *Vice-Chanc. Wigram's Points in the Law of Discovery, Adv. vii. 2d Ed. London, 1840.*

"The most renowned of these Judges [of the Supreme Court of the United States] is Joseph Story." *Das Verfassungs Recht der Vereinigten Staaten Nord America's, nach James Kent, by Dr. Bissing.*

A glance at the English Reports will make it evident that the works of Mr. Justice Story are familiarly and favorably known to all the Courts. Two instances, in which they were cited with marked respect, have been already noticed.

Mr. Dampier, in a very celebrated argument to the House of Lords, observes: "The subject is ably treated by Mr. Justice Story. To his remarks the House may with propriety be referred." *Birtwhistle v. Vardill*, 7 Cl. & Fin. R. pp. 910, 911.

Lord Cottenham remarks, that the authorities on a novel point in international law, "are well collected and observed upon by Dr. Story." *Johnstone v. Beattie*, 10 Cl. & Fin. R. p. 116.

The Attorney-General cites Chancellor Kent and Mr. Justice Story as "two most eminent lawyers." *Queen v. Millis*, 10 Cl. & Fin. R. 546.

"I cannot refrain from asking your Lordships to consider how this subject has been viewed by our brethren in the United States of America. They carried the common law of England along with them, and jurisprudence is the department of human knowledge, to which, as pointed out by Burke, they have chiefly devoted themselves, and in which they have chiefly excelled. Their two greatest legal

luminaries are Chan. Kent and Prof. Story." *S. C. Opinion of Lord Campbell*, 10 Cl. & Fin. R. 777.

"The Court took time to consider the case, which was argued very ably a few days ago, not from any doubt we felt at the time, but from a desire to examine certain authorities, to which we were referred, in American text writers." *Opinion* (pronounced by Parke, B.) in *Vlierboom v. Chapman*, 13 Mees. & W. R. 233. The case was then decided in conformity with Mr. Justice Story's note to Abbott on Shipping, p. 329.

The case of *Hall v. Smith*, 1 Barn. & Cresw. R. 407, was overruled by the Court of Exchequer in conformity to an opinion expressed in *Story on Partnership*, sec. 143. See *in re Clarke et al.* 1 Phillips, Chanc. Rep. 562; *Ex parte, Buckley*, *in re Clarke*, 14 Mees. & Welsb. 473.

Mr. Justice Story's works are referred to as authorities in the following English cases: *Clark v. Mullick*, 3 Moore's P. C. Rep. 258; *Downman v. Williams*, 7 A. & E. 107; *King v. Simmons*, 7 A. & E. 299; *Harrison v. Ruscoe*, 15 Mees. & Welsb. 234; *Rawlinson v. Clark*, Ibid. 298; *Wilders v. Stevens*, Ibid. 210; *Brown v. Wilkinson*, Ibid. 395; *Chappell v. Parday*, 14 Ibid. 308; *Orinrod v. Huth*, Ibid. 661; *Catherwood v. Caslon*, 13 Ibid. 263; *Franklin v. Neate*, Ibid. 482, 483; *Acton v. Blundell*, 12 Ibid. 350; *Mackersy v. Ramsays*, 9 Cl. & Fin. 834; *Fergusson v. Fyffe*, 8 Ibid. 134; *Drake v. Attorney-General*, 10 Ibid. 277; *Grant v. Hunt*, 2 M. G. & Sc. 51; *Cooper v. Willomatt*, Ibid. 681; *Countess of Dalhousie v. McDonall*, 7 Cl. & Fin. 823, 824, 831, 832; *Munro v. Munro*, Ibid. 866; *Wilson v. Tunnan*, 6 Man. & Gran. 240; *Cole v. Green*, Ibid. 892; *Stewart v. Stewart*, 6 Cl. & Fin. 949.

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*Commentaries on the Constitution of the United States, with a Preliminary Review of the Constitutional History of the Colonies and States before the Adoption of the Constitution.* 3 vols. 8vo. Boston, 1833. *The Same, abridged by the Author.* 8vo. Boston. 1833.

"This great work . . . admirable alike for its depth of research, its spirited illustrations, and its treasures of political wisdom, has accomplished all, in this department, which the friends of constitutional law and liberty could desire." *Prof. Greenleaf's Eulogy.*

We know not that we could point to an individual better qualified for the task than the author of these 'Commentaries.' His habits of severe study, and accurate investigation and comparison of written instruments, and his long official experience in the examination of legal and constitutional questions, with a powerful and penetrating mind, give a value to his labors which few commentators could receive or claim.

"The Commentaries are themselves a review of the constitution. . . . The Judge takes not a step without feeling that his ground is firm and his way marked by the surest guides. . . . The Commentaries contain a full, lucid, and satisfactory explanation of the history and principles of our government and the distribution of its



powers, sustained by a course of clear and consistent reasoning and high authority." *American Quarterly Review*, (Philadelphia) Dec. 1833, v. 14, p. 329. *From a review by Judge Hopkinson.*

"The work is of the very highest importance, as bearing both upon legislation and jurisprudence; since it presents the subject of constitutional law so luminously before the community, that it will be scarcely possible that any question henceforth arising on the subject should be superficially treated, either in legislative debate, or forensic argument." *Jurist*, (American) v. 10, p. 147, July, 1833.

"The work now before us is to our Constitution all that Blackstone's Commentaries were to the English Constitution. . . . [It shows] a rare union of patience, brilliancy, and acuteness, . . . containing all the learning on the constitution brought down to the latest period, so as to be invaluable to the lawyer, statesman, politician, and in fine to every citizen who aims to have a knowledge of the great charter under which he lives." *American Monthly Review*, December, 1833.

"I have finished reading your great work, and wish it could be read by every statesman, and every would-be statesman in the United States. It is a comprehensive and an accurate commentary on our constitution, formed in the spirit of the original text. In the South, we are so far gone in political metaphysics that I fear no demonstration can restore us to common sense. The word 'State Rights,' as expounded by the resolutions of ninety-eight, and the report of ninety-nine, construed by our legislature, has a charm against which all reasoning is vain. Those resolutions, and that report, constitute the creed of every politician who hopes to rise in Virginia, and to question them, or even to adopt the construction given by their author is deemed political sacrilege. The solemn and interesting admonitions of your concluding remarks will not I fear avail as they ought to avail against this popular frenzy." *Chief Justice Marshall in a letter to Mr. Justice Story.*

"An important work,—the Commentary on the Federal Constitution of the United States of America, by Joseph Story,—has just been translated by M. Paul Odent. If a translation of Story's Commentary had appeared immediately after the revolution of 1830, it would have been a wonderful assistance to the curiosity of those, who were studying the American institutions, in attempting to compare them, in a view of our own political organization. Dr. Joseph Story, Judge of the United States Supreme Court, Professor and Dean in Harvard University, has done for the constitutional law of America what William Blackstone did for English law. . . . M. Paul Odent, the translator, tells us that the Commentaries of Story on the Constitution, always according with the decisions of the great Judge Marshall, have become the guide of all the American juriconsults. Although in France they have not this practical importance, the work of Story will be for us a valuable *systemisation*, which will enable us to take in at a glance the whole principle of the American institutions with certainty. The author of 'Democracy in America' often relies on Story's authority, particularly in the first part of his work. M. de Tocqueville was fortunate, in finding in the Commentary of the American Blackstone, a complete view of the legislative powers of the United States." . . . *Revue des Deux Mondes*, of Paris.

"Mr. Justice Story acted wisely in making the Federalist the basis of his Commentary; and as we had the experience of nearly fifty years since the Federalist was written, the work of Judge Story was enriched with the result of that experience, and it is written in the same free and liberal spirit, with equal exactness of research and soundness of doctrine, and with great beauty and elegance of composition." *Kent's Commentaries*, v. 1, p. 241.

"It is the province of a work, like Mr. Justice Story's, and by him most successfully administered, to place the entire learning relative to the subject treated, in precisely that form which makes it most intelligible and most attractive to the student, giving not all that the books contain, but all that the magnetism of a good mind takes up from them, as possessing the quality in request." *North American Review*, Jan. 1834, v. 38, p. 63.

"A work of various and profound learning, full of the results of sound political wisdom, and careful observation of the history of the country." *American Review*, *New York*.

"His work on the Constitution of the United States is one of his most eminently successful labors." *Hon. Daniel Webster, Pref. 3 Story's Rep.* p. iv.

"The explanation is particularly distinguished by a homogeneity in the mode of treatment, and an acuteness of logic of the very highest grade; and generally manifests a very just political feeling, and a peculiarly sound understanding in the conclusions. The examination of the opinions of others which the author's extraordinary reading has enabled him to bring together is extremely copious, and oftentimes surprisingly striking and acute. The reader will seldom differ from the author in opinion, or leave his discussion without being fully satisfied. To these great excellencies, it has doubtless much contributed that the author introduces his explanation of the individual points by a full and highly successful establishment of the fundamental principles to be followed in the exposition of the constitution, and thus obtain a sure foundation for himself and his reader.

"It would carry us too far, if we were to undertake to point out all the particular discussions and passages, in which the author has resolved his problem in a particularly happy manner; they are quite too many. . . . We have in this work as perfect and excellent a Commentary on the North American Public Law as can be produced by deep and profound reflection, acute logic, extensive knowledge of the national condition and writings, and just political views. Professor Story, by his able and diligent labors, has, without doubt, done a great service, not only to his countrymen, but also, and a still higher degree, to the European publicists, among whom his work will receive an honorable fame, as readily awarded as it will be enduring." *Extract from a Review by Prof. R. Mohl, of Tübingen, in the Kritische Zeitschrift, &c., published at Heidelberg by Professors Mittermaier and Zachariæ.*

"A good French translation of this Abridgment would be a service rendered to all the Continent of Europe." *Revue Etrangère, Paris*. It has since been translated, by Paul Odent, in two volumes, 8vo.

"They contain a most comprehensive and accurate exposition. . . . They should be attentively read by all who are desirous of acquiring a correct view of the original constitution of our American colonies." *Law Review, London*, iii. 375.

"The clear and intelligent account they contain of the political as well as judicial system of America." *Edinburgh Law Journal*, v. 2, p. 427.

"It is indispensable to one who wishes to have an exact and complete idea of the Federal Constitution of the United States." *Revue Etrangère*, v. 10, p. 687.

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*Commentaries on the Conflict of Laws, Foreign and Domestic.*  
3d. ed. 8vo. Boston, 1841.

This work has been reprinted in England, has been translated into German, and we are informed that a translation is now preparing into French. It has been extensively

reviewed both in Europe and in this country. The following are extracts from some of the reviews:—

"Judge Story, whose distinguished ability and industry have contributed so much to the exalted reputation of the Supreme Court, finds time, in the intervals of judicial duty, to favor the profession and the public with treatises upon important subjects of legal science, as Dane Professor of law in Harvard University. . . . [In] the work itself all the necessary explanations are given to render the subject perfectly intelligible. A perusal of the work will show the great number of authors whose books have been examined, and the endeavors to reconcile their conflicting opinions, when it was possible to do so. The work on the Conflict of Laws will have a decided influence in realizing Cicero's wish, and in bringing about a consummation so much desired,—a uniformity of laws among the different nations of the world." *American Quarterly Review*, (Philadelphia,) June, 1835, vol. 17, p. 303.

"He has brought to bear upon the subject, and to enlighten it, an immense fund of foreign learning, and there is no treatise extant on the subject of Conflict of Laws, so accurate, full, and complete. There was no one head of the law that stood so greatly in need of such an effort." *Kent's Comm.* vol. 2, p. 463.

"Others have written more voluminously on these topics, but none with greater power." *Prof. Greenleaf's Eulogy*.

"The most able, profound, and original of his writings. The various, deep, and rare learning of this work, is not more remarkable than its luminous arrangement, the natural succession of its topics, and the fulness of its illustrations." *American Review*, New York.

"This admirable treatise. . . . The author has displayed much industry, acumen, and fecility in managing and arranging materials which none but the hand of a master could have moulded into the perfect form they have assumed under his direction." *Louisiana Law Journal* (May, 1841,) vol. 1, p. 77.

"It is, therefore, absolutely refreshing to sit down to the task of commenting on a work such as that before us, of which we may commence by saying, that if the subject-matter is vast, the arrangement is philosophical and lucid, and the style is almost classical." *Jurist* (English), vol. 5, p. 562.

"Valuable work." *Hosack's Conflict of Laws*, Part I. p. 63. London, 1847.

"Its discussion was to be found only in the writings of continental jurists, until Mr. Justice Story bestowed on it the learning and research for which he is so eminently distinguished. His treatise on the Conflict of Laws, foreign and domestic, is cited by English Judges with the high commendation it so justly merits, and international jurisprudence is largely indebted to him." *Commentaries on Colonial and Foreign Laws*, by William Burge, Esq., London, 1838, Ded. p. xi.

"Mr. Justice Story's Conflict of Laws is one of the most interesting and valuable juridical publications of modern times, and ought to be in the possession of every lawyer, in whatever department he may practise, who aims at obtaining an enlarged and comprehensive view of law, as applicable to some of the most important rights and relations of mankind. Of this work it is difficult to speak in terms of adequate eulogy." *Practical Introduction to Law Studies*, by Samuel Warren, F. R. S. 2d ed. p. 771. London, 1845.

"This work of an American Jurist is calculated to excite the most lively interest in both hemispheres. M. Story is the first writer who, in our time, has employed himself,

*ex professo*, upon International Law, and we think that he has fully performed the duty which he undertook. . . . We have found, upon all the matters of International Law, the discussions properly reasoned and supported by authorities." *Revue Etrangère, Paris*.

"Particularly to be recommended, therefore, is the present work of this author (the same whose excellent Commentaries on the Constitution of North America was noticed in our preceding number,) who has a rare practical tact. . . . and at the same time is noted for a strict scientific education, a thing rare in America." *From a notice by Mittermaier in the Kritische Zeitschrift, &c., a Law Magazine published at Heidelberg*, vol. 7, p. 228.

"I have repeatedly and deliberately gone through the whole work of Mr. Justice Story, which I deem the most comprehensive and candid in our language, relating to that department of the law administered so long by the Consistory Court of Edinburgh as the Inferior, and the Court of Session as the Grand Consistory of this Kingdom. No jurist can peruse it without admiration of the industry, candor, and learning with which it is composed.

"If you can attract the attention certainly merited to this work, it must be useful in dispelling prejudices and exciting imitation. For it supplies valuable information, supported by a greater body of authorities, both in opinions of the most eminent jurists, and in decisions of consistorial judicatures, that I have before seen collected in one volume." *Extract of a letter by J. Fergusson, Esq., late Judge in the Consistorial Court of Scotland, and author of the work on Divorce*.

"Professor Story has long been known to the jurists of every country of Europe, as one of the few great masters of the science of jurisprudence that the world at present possesses, and one who has been mainly instrumental in pushing forward those legal reforms which have of late years done honor to the United States. . . . The example of the daughter has stimulated the parent, and England has, during the last five years, made greater advances towards perfecting her system of jurisprudence, than during any century of her previous history. We hail, therefore, the work of Professor Story, not merely on account of its intrinsic beauties, but also as a means of promoting an interest in the study of jurisprudence. The power with which he has balanced conflicting arguments, and the learning which he has displayed in travelling through the heavy labors of his predecessors, and extracting from them the pith of their reasonings, must delight every inquisitive mind, and justify us in a hope, which they who peruse the book will not think extravagant, that the Treatise on the Conflict of Laws may prove the foundation in this country of a school of jurisprudence." *Legal Examiner, (London)*, vol. 4, p. 512.

"Observing how little had been done in England in this department of law, the late Mr. Justice Story, in order to supply this want, resorted to the writings of the continental writers before mentioned, and in 1834 produced his excellent Commentaries on the Conflict of Laws." *Law Review, London*, vol. 4, p. 326.

"No work on international jurisprudence merited, or ever received greater praise from the jurists of Europe. It impressed English lawyers with the highest respect for the extensive learning of Mr. Justice Story, and the practically useful purposes to which he applied it. It is scarcely ever cited without a sincere encomium, either from the Bench or the Bar, on its great merits, and the obligations its learned author has conferred on the profession. The feelings of respect with which his character and eminent attainments were regarded, were evinced on the occasion of his expected visit to England two or

three years ago, when the Masters of the Benches of the several inns of Court had resolved on inviting him to a public dinner in their halls. Unfortunately the state of his health prevented him from visiting Europe, and the Bar of England were deprived of the opportunity of personally offering him their homage and respect." *Law Review*, London, vol. 3, pp. 376, 377.

"Dr. Story's work is altogether of so excellent a description, and betokens a mind so completely imbued with the purest principles of legal philosophy, that it ought to be in the hands of every person, who aims at studying in an intelligent way the higher departments of professional knowledge." *Edinburgh Law Journal*, vol. 2, p. 428.

Sir N. C. Tindal, C. J. of the Court of Common Pleas, in delivering the opinion of the Court, in the case of *Huber v. Steiner*, in noticing an important distinction which had been taken by counsel, remarked,—"This distinction is stated to be adopted from a work entitled *Commentaries on the Conflict of Laws*, p. 437, by Joseph Story, LL.D., a work which it would be unjust to mention, without at the same time paying a tribute to the learning, acuteness, and accuracy of its author." 2 *Bingham's New Cases*, 211.

Lord Brougham also referred to "the excellent distinction taken by Mr. Justice Story, and approved of in the Court of Common Pleas, in the case of *Huber v. Steiner*." *Donn v. Lipmann*, 5 Cl. & Fin. R. 16.

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*Commentaries on Equity Jurisprudence, as administered in England and America.* 2 vols. 8vo. 4th ed. Boston, 1846.

*Commentaries on Equity Pleadings, and the Incidents thereto, according to the Practice of the Courts of Equity in England and America.* 4th ed. 8vo. Boston, 1848.

"The profession are greatly indebted to the distinguished Jurist, whose excellent works, we have often heretofore had occasion to notice, for these most valuable Commentaries [Equity Jurisprudence, vol. i.] The first volume only has yet appeared, but the plan of the work, the manner in which it has thus far been executed, and the well known talents, profound learning, great experience and judgment of the author, give ample assurance that when completed, it will supersede all other treatises upon the same subject. Such a work has been much wanted. No complete treatise upon Equity Jurisprudence has been published." *Jurist*, (American,) v. 15, p. 363, July, 1836.

[Equity Jurisprudence.] "The masterly treatise." 2 *Kent's Comm.* 466, note.

"This is one of the best, [Equity Jurisprudence,] if not the best of the books published by its learned author. It may be said to be the most complete treatise on the subject, systematically arranged, treating upon almost every point that has arisen, or may arise, and especially rich and delightful in its references to, and illustrations drawn from, the civil law. *American Law Magazine*, (Philadelphia,) v. 1, p. 448, July, 1843.

"In point of learning and research, it [Equity Pleadings] will bear a comparison with any of the elaborate works already published by its author. . . . As a practical manual for consultation and reference, it renders all other works of the kind superfluous and unnecessary, as it contains all that is to be found in them, and much that is new." *American Jurist*, v. 19, p. 483, July, 1838.

"There are no works in our language in which the true doctrines and practice of the Law of Equity and its importance to the administration of complete justice, are so con-

vincingly taught; and probably no one of his works has been received by the profession with greater thankfulness, or is more frequently consulted." *Professor Greenleaf's Eulogy*.

"One of the very best books [Equity Jurisprudence] that has ever been written in English upon any legal subject." *American Review, New York*.

[Equity Pleadings] "in which a difficult and abstract subject is treated with singular clearness and comprehensiveness." *Ib*.

[Equity Jurisprudence.] "The critical and elaborate learning with which every title of Equity is discussed, blending the utility of a Digest with the merit of a philosophical treatise, must always render that great work indispensable to the lawyer, or the advanced student." *Holcombe's Introduction to Equity Jurisprudence, Cincinnati, 1846*.

"The approbation of this work [Equity Jurisprudence] by the profession in this country and in England, is high evidence of its merit, and of the great learning and ability of its author." *Mr. Justice McLean's opinion in Story's Ex. v. Holcombe*.

"The best text-book, by far [Equity Jurisprudence] ever yet published on that subject." *Hon. H. S. Legaré, New York Review, v. 5, p. 287*.

"The merits on which we found our recommendation of the work, [Equity Pleadings] are the admirable arrangement of matter, the clear statement of the cases which are quoted, and the lucid and forcible manner in which their bearing upon the several doctrines is illustrated. These are merits of no ordinary advantage to the practical lawyer, and of inestimable benefit to the student." *Law Magazine, London, May, 1839*.

"We hail the appearance of this work [Equity Pleadings] with great pleasure. The name of its distinguished author vouches for the ability of its execution; and on no subject, could he have more usefully employed himself than that which he has selected. There is one unusual and interesting circumstance connected with this treatise:—It contains an attempt, (the first of which we are aware,) to show that the abilities of a transatlantic lawyer may be made available in England; not merely in the elucidation of general principles, but in the explanation of practical details. Here is a treatise upon pleading, written in America, and intended as a work of reference, not merely for the American, but for the English pleader. This is a bold experiment; still, such are the merits of the work, that we venture to say it will prove a successful one.

"It was not our intention to present our readers with a detailed account of this treatise. It contains a thorough investigation of the *system of Equity Pleading, its principles and practice*. The author has never lost sight of the former, while examining the *minutiae* of the latter, a task on which he has bestowed a degree of labor which it is really impossible to consider without astonishment. Numbers of books are cited in this treatise, the circulation of which, we had thought, was confined to London, but which he has evidently perused, compared, and criticized with the greatest diligence and the most striking acuteness.

"We cordially recommend the work to readers of every denomination. It is so written as to be intelligible and instructive to the mere beginner, while at the same time it contains a store of learning, from which even the greatest masters of their profession need not be ashamed to draw. We should have inserted a much longer notice of it, were we not sure that its intrinsic merits would obtain for it a higher place in the estimation of the reader, than can possibly be conferred by the eulogium of a critic." *Jurist, (English,) Oct. 13, 1838*.

"The accurate and learned critic of English and American Law." *From a Notice in the Kritische Zeitschrift, &c.*, v. 8, p. 420, by Michaelis of Tübingen.

"We strongly recommend the entire work [Equity Jurisprudence] to the perusal of our readers. In the work upon Equity Pleading, we found an excellent arrangement, a clear statement of cases, and a satisfactory explanation of all received doctrines. In this work, far higher qualities have been displayed. Maxims are laid down and traced in their operation. The history of the jurisdiction is stated, the principles are developed upon which it is maintained, and the entire equitable system assumes a philosophical character, with which it has never been invested by any preceding author. The student finds an easy introduction to all the principal characteristics of equitable doctrines, and while he learns to view them with interest, is invited to further and more accurate investigation." *Law Magazine, (London,)* v. 22, p. 61, Aug. 1839.

"It has stated [the article 'Equity' in the Encyclopedia Americana, written by Judge Story] the real case much more accurately than I can find it stated in any English law-book." *From a Lecture by Professor Park, of King's College, London.*

[Equity Jurisprudence.] "This work enjoys in England, as well as in the United States, a high respect and great authority. It is a book equally useful for its expositions of principles and practice." *Revue Etrangère, Paris*, v. 9, p. 200.

[Equity Jurisprudence.] "With the single exception of the Commentaries on Equity, we have, in fact, no work of authority which pretends to define the various duties and powers of the highest and most important branch of our municipal institutions." *Jurist, (English)* v. 3, p. 728.

*Commentaries on the Law of Bailments, with Illustrations from the Civil and the Foreign Law.* 4th ed. 8vo. Boston, 1846.

"In our Introductory Lecture on the Roman or Civil Law, we had occasion to advert to this admirable work of Mr. Justice Story, an author always learned, perspicuous, elementary, and thorough, *quem appellasse, laudasse est*. We there perceive the riches of a highly cultivated and embellished mind, gratefully returning to the abundant fountain of the Roman Law a portion of its borrowed wisdom, and paying the most willing homage to the exalted merit of Justinian, of Pothier, Domat, Vinnius, Heineccius, and others." *Hoffman's Legal Outlines*, v. 1, p. 419.

"I would strongly recommend that volume to the student, who wishes to pursue more extensively than the plan of the present lecture permitted, the refined distinctions and practical illustrations which accompany this branch of the law. I have availed myself of the lights which that work has afforded, and the confidence which it has inspired, while engaged in the revision of my own more brief and imperfect survey of the subject. This excellent treatise is the most learned and the most complete of any that we have on the doctrine of bailment. It aims to lay down all the principles appertaining to the subject, both in the civil, the foreign, the English, and the American law, with entire accuracy; and I beg leave to say, after a thorough examination of the work, that in my humble judgment, it has succeeded to an eminent degree." *Kent's Comm.* v. 2, p. 611.

"Every thing regarding this subject which is really valuable, in either system, may be found in this work. The plan and execution of it deserve the highest commendation. It is a book which, from its intrinsic merit, and preëminent utility, will readily find its way into the library of every accomplished, practical lawyer, and for its various learning

and sound doctrines, will be read and admired by every learned jurist." *American Jurist*, (Jan. 1832,) v. 7, p. 202.

"He has embraced the whole of the Common Law of Bailments in the most complete and methodical manner, and has shed a bright light over the entire subject. Nor is this all. He has embodied in his work a luminous commentary on the civil law in relation to the doctrine of Bailments, and on the derivative codes of France, Germany, Spain, and Scotland." *American Monthly Review*, (April, 1832,) v. 1, p. 334.

[This treatise] "contains not only all the common law learning upon this subject, but all that is valuable and important in the writings of the civilians." *American Review*, New York.

"Once more we have the advantage of a very luminous work by Mr. Justice Story. In it he combines the two principal characteristics of English and foreign treatises. Like the foreigner he inquires deeply into the several branches of the subject, and not content with stating what the law is, he adds the reasons on which it has been established. Like our own treatises, his work contains the rules, which are to be gathered from the several decisions, stated with neatness and precision, and easily referred to under their several appropriate heads." *Law Magazine*, (London,) May, 1840.

"All who have studied the Commentaries, — the admirable Commentaries, — of this illustrious American on the 'Conflict of Laws,' — and his equally able 'Commentaries on Equity Pleadings,' — will be grateful to Mr. Charnock for the introduction of this treatise into the English catalogue of legal works. It is, indeed, an important addition to the library of the lawyer, and will, ere long, not only be regarded as an indispensable auxiliary in Chambers, but attain to the rank of an authority in our courts. We have no doubt that from other quarters, and from the lips of individuals much higher than we are, the same sentiment will be repeated." *Monthly Law Magazine*, (London,) Feb. 1839, v. 4, p. 84.

"It is impossible to rise from the perusal of such a work as the present, a work written in our English language, upon a branch of our English law, without experiencing a sense of deep national mortification that it should have proceeded from any other pen than that of an Englishman. *Second notice in the Monthly Law Magazine*, April, 1839.

"A short time since, having accidentally ascertained that a work on the Law of Bailments had been published in America by Dr. Story, the editor became extremely desirous to possess a copy of a book, which he anticipated, (judging by Dr. Story's other works,) he should find to be valuable. The editor made inquiries in every direction where it was deemed probable he should obtain it, but without success. It is believed that none of the libraries of our Inns of Court, nor that of the British Institution, possess a copy, and certainly no such book is contained in the Catalogue of the British Museum. Many further attempts were made to acquire this work, and in every instance the editor failed in accomplishing the object he so anxiously sought. Chance then came to his aid, and granted him that boon, which his efforts had not been able to effect. The editor was informed that a barrister, resident in the Temple, who possesses a magnificent library, had this book, it having been, it is believed, Lord Stowell's copy. The editor was accommodated with the loan of the book, and as purchasing it could not be thought of, he incurred the expense of employing an amanuensis, and thus enabled, he has enriched his own library with the desideratum. Considering the difficulty of procuring this book, it occurred to the editor that a reprint in this country, would be deemed an acceptable offering to the profession." *From the Preface to the English edition*, London, 1839.



"A work of great value and learning." *Legal Observer*, v. 17, p. 330.

"The only complete treatise on this head of law. It may be affirmed of these Commentaries, that an attentive perusal of them will supply the student with the fullest and most perfect information on every question which can arise on the Law of Bailments." *Law Review*, (London,) v. 3, 374, 375.

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*Commentaries on the Law of Agency, as a Branch of Commercial and Maritime Jurisprudence, with occasional Illustrations from the Civil and Foreign Law.* 3d ed. 8vo. Boston, 1846.

"Mr. Justice Story, in his valuable treatise, has supplied every deficiency, and left nothing to be desired by the practitioner or student. . . . The whole work is marked with that ample and redundant learning and vigorous good sense, which have given his previous writings so high an authority both in England and America." *Jurist*, (American,) v. 22, p. 479, Jan. 1840.

"It is not necessary that we should recommend this work to the profession, but we earnestly commend it to the especial attention of those readers who are engaged in mercantile pursuits." *Law Reporter*, Nov. 1839, v. 2, p. 219.

"The powerful assistance which Mr. Justice Story has already given in the study of several departments of Law and Jurisprudence, is a sufficient reason for drawing the attention of our readers to his new publication; but an additional motive, were any needed, would be supplied by the spirit in which all his publications are conceived. . . . He has entered . . . philosophically into the subject, has traced principles with . . . persevering scrutiny; and without losing sight of the wants of a practical lawyer, has produced a treatise in which the student may ascertain the elements and principles on which the entire doctrine is founded." *Law Magazine*, (London) v. 23, p. 1, Feb. 1840.

"The principal work on the English and American Law of Agency, is Story's Commentaries, &c." *Mittermaier Privatrecht*, b. vii. § 551, note 1. (ed. 1843.)

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*Commentaries on the Law of Partnership, as a Branch of Commercial and Maritime Jurisprudence, with occasional Illustrations from the Civil and Foreign Law.* 8vo. 2d edition. Boston, 1846.

"The two last [Collyer on Partnership, and Story on Partnership] are works of great merit, and the latter preëminently so, and they have stated fully the principles and distinctions, and given the learning and cases which belong to the subject." *Kent's Comm.* v. 3, 68.

"Partnerships form the subject of the last treatise, which contains a truly luminous exposition of a subject noted for its intricacy, and the subtlety of the rules upon which the system depends." *Warren's Law Studies*, p. 760, 2d ed.

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*Commentaries on the Law of Bills of Exchange, Foreign and Inland, as administered in England and America.* 8vo. 2d edition. Boston, 1847.

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*Gallison's Reports. Reports of Cases in the Circuit Court of the United States for the First Circuit.* 2d ed. *With additional Notes and References.* By John Gallison. 2 vols. 8vo. Boston, 1845.

*Mason's Reports. Reports of Cases in the Circuit Court of the United States for the First Circuit, from 1816 to 1830.* By William P. Mason. 5 vols. 8vo. Boston, 1819-31.

*Sumner's Reports. Reports of Cases argued and determined in the Circuit Court of the United States for the First Circuit.* By Charles Sumner. 3 vols. 8vo. Boston, 1836-40.

*Story's Reports. Reports of Cases argued and determined in the Circuit Court of the United States for the First Circuit.* By W. W. Story. 3 vols. 8vo. Boston, 1842-47.

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"Admirable specimens of judicial statement and reasoning." *London Quarterly Review*, Dec. 1840.



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